

SENATE BILL No. 334

By Committee on Judiciary

1-19

1 AN ACT concerning the attorney general; relating to notice and
2 opportunity to appear or intervene before statute or constitutional
3 provision declared invalid or unconstitutional; amending K.S.A. 60-
4 1712 and K.S.A. 2015 Supp. 60-224 and repealing the existing
5 sections.

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

8 New Section 1. (a) It is hereby declared to be the public policy of the
9 state of Kansas that the attorney general, as the state's chief legal officer,
10 should have notice and the opportunity to appear and be fully heard before
11 any statute or constitutional provision of this state is determined by the
12 judicial branch to be invalid as violating the constitution of the state of
13 Kansas, the United States constitution or any other provision of federal
14 law. This section shall be liberally construed to effectuate that public
15 policy.

16 (b) Before declaring or determining any statute or constitutional
17 provision of this state invalid as violating the constitution of the state of
18 Kansas, the United States constitution or any other provision of federal
19 law, or enjoining any statute or constitutional provision for such invalidity,
20 or entering any judgment or order that determines or declares such
21 invalidity, a district court or any judge of the district court, whether acting
22 in judicial or administrative capacity, shall require:

23 (1) In any criminal case, that the state of Kansas has been given
24 notice of the disputed validity and provided an opportunity to appear and
25 be heard on the question of the validity of the statute or constitutional
26 provision. Such notice shall be served by the party disputing validity on
27 the prosecuting attorney representing the state in such criminal case. If the
28 prosecuting attorney fails to respond to such notice, the court shall notify
29 the attorney general of such failure to respond and shall provide the
30 attorney general the opportunity to appear and be heard on the question of
31 the validity of the statute or constitutional provision; and

32 (2) in any civil case, and in all other matters, that notice of the
33 disputed validity has been served on the attorney general by the party
34 disputing validity, or by the court, and the attorney general has been given
35 an opportunity to appear and be heard on the question of the validity of the
36 statute or constitutional provision.

1 (c) In any matter before the supreme court or the court of appeals, or
2 any justice or judge thereof:

3 (1) A party that files a pleading, brief, written motion or other filing
4 or paper that contests or calls into doubt the validity of any statute or
5 constitutional provision of this state shall serve such filing or paper on the
6 attorney general, accompanied by a conspicuous notice that the attorney
7 general is being served pursuant to this section; and

8 (2) the court shall ensure that the attorney general has been provided
9 notice and an opportunity to appear before determining any statute or
10 constitutional provision of this state to be invalid as violating the
11 constitution of the state of Kansas, the United States constitution or any
12 other provision of federal law.

13 (d) If any court, or justice or judge thereof, enters any judgment or
14 order, or makes any determination or declaration, in violation of this
15 section, the attorney general may, within a reasonable time of learning of
16 such violation, apply to the court to set aside or rescind such judgment,
17 order, determination or declaration. Such application shall be considered
18 timely if made within 30 days from the date the court, or justice or judge
19 thereof, files such judgment, order, determination or declaration, or within
20 15 days after the attorney general has learned of such violation, whichever
21 is later. Upon application of the attorney general under this subsection, the
22 court shall enter such orders as are necessary to allow the attorney general
23 to appear and be heard and shall set aside or rescind such judgment, order,
24 determination or declaration upon a showing it was entered in violation of
25 this section.

26 (e) Whenever notice is required to be served on or provided to the
27 attorney general by this section, the attorney general shall be allowed at
28 least 21 days from the date of such notice to appear or intervene, and if the
29 attorney general does appear or intervene, the attorney general shall be
30 given such reasonable additional time to be fully heard as the court may
31 order.

32 (f) Nothing in this section shall be construed to require the attorney
33 general to appear or intervene in any action.

34 (g) This section shall not apply in any action or proceeding in which
35 the attorney general is the party disputing or defending the validity of the
36 statute or constitutional provision.

37 Sec. 2. K.S.A. 2015 Supp. 60-224 is hereby amended to read as
38 follows: 60-224. (a) *Intervention of right*. On timely motion, the court
39 must permit anyone to intervene who:

40 (1) Is given an unconditional right to intervene by a statute; or

41 (2) claims an interest relating to the property or transaction that is the
42 subject of the action, and is so situated that disposing of the action may as
43 a practical matter substantially impair or impede the movant's ability to

1 protect its interest, unless existing parties adequately represent that
2 interest.

3 (b) *Permissive intervention.* (1) *In general.* On timely motion, the
4 court may permit anyone to intervene who:

5 (A) Is given a conditional right to intervene by a statute; or

6 (B) has a claim or defense that shares with the main action a common
7 question of law or fact.

8 (2) *By a government officer or agency.* (A) On timely motion, the
9 court may permit a governmental officer or agency to intervene if a party's
10 claim or defense is based on:

11 (i) A statute or executive order administered by the officer or agency;
12 or

13 (ii) any regulation, order, requirement or agreement issued or made
14 under the statute or executive order.

15 (B) When the validity of an ordinance, regulation, statute or
16 constitutional provision of this state or a governmental subdivision of this
17 state is drawn in question in any action to which the state or governmental
18 subdivision or an officer, agency or employee thereof is not a party, the
19 court may notify the chief legal officer of the state or its subdivision, and
20 permit intervention on proper application.

21 (C) *When notice to the attorney general is required by section 1, and*
22 *amendments thereto, the court must permit intervention by the attorney*
23 *general on proper application.*

24 (3) *Delay or prejudice.* In exercising its discretion, the court must
25 consider whether the intervention will unduly delay or prejudice the
26 adjudication of the original parties' rights.

27 (c) *Notice and pleading required.* A motion to intervene must be
28 served on the parties as provided in K.S.A. 60-205, and amendments
29 thereto. The motion must state the grounds for intervention and be
30 accompanied by a pleading that sets out the claim or defense for which
31 intervention is sought.

32 Sec. 3. K.S.A. 60-1712 is hereby amended to read as follows: 60-
33 1712. When declaratory relief is sought, all persons who have or claim any
34 interest which would be affected by the declaration shall be joined as
35 parties who have or claim any interest which would be affected by the
36 declaration, and no declaration shall be binding against persons not so
37 joined as parties to the proceeding. In any proceeding which challenges the
38 validity of a municipal ordinance or franchise, such municipality shall be
39 made a party. If the statute, ordinance or franchise is alleged to be
40 unconstitutional, the attorney general ~~or an assistant attorney general shall~~
41 ~~also be served with a copy of the proceeding and be entitled to be heard~~
42 *also shall be given notice and provided an opportunity to appear and be*
43 *heard in accordance with the provisions of section 1, and amendments*

1 *thereto.*

2 Sec. 4. K.S.A. 60-1712 and K.S.A. 2015 Supp. 60-224 are hereby
3 repealed.

4 Sec. 5. This act shall take effect and be in force from and after its
5 publication in the statute book.