

SENATE BILL No. 317

By Committee on Judiciary

1-20

10 AN ACT concerning civil procedure; relating to business records sub-
11 poenaed by a party; amending K.S.A. 2003 Supp. 60-245a and repeal-
12 ing the existing section.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2003 Supp. 60-245a is hereby amended to read as
16 follows: 60-245a. (a) As used in this section:

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

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

23 (b) A subpoena duces tecum which commands the production of
24 business records in an action in which the business is not a party shall
25 inform the person to whom it is directed that the person may serve upon
26 the attorney designated in the subpoena written objection to production
27 of any or all of the business records designated in the subpoena within
28 14 days after the service of the subpoena or at or before the time for
29 compliance, if the time is less than 14 days after service. If such objection
30 is made, the business records need not be produced except pursuant to
31 an order of the court upon motion with notice to the person to whom the
32 subpoena was directed.

33 Unless the personal attendance of a custodian of the business records
34 and the production of original business records are required under sub-
35 section (d), it is sufficient compliance with a subpoena of business records
36 if a custodian of the business records delivers to the clerk of the court by
37 mail or otherwise a true and correct copy of all the records described in
38 the subpoena and mails a copy of the affidavit accompanying the records
39 to the party or attorney requesting them within 14 days after receipt of
40 the subpoena.

41 The records described in the subpoena shall be accompanied by the
42 affidavit of a custodian of the records, stating in substance each of the
43 following: (1) The affiant is a duly authorized custodian of the records

1 and has authority to certify records; (2) the copy is a true copy of all the
2 records described in the subpoena; and (3) the records were prepared by
3 the personnel or staff of the business, or persons acting under their con-
4 trol, in the regular course of the business at or about the time of the act,
5 condition or event recorded.

6 If the business has none of the records described in the subpoena, or
7 only part thereof, the affiant shall so state in the affidavit and shall send
8 only those records of which the affiant has custody. When more than one
9 person has knowledge of the facts required to be stated in the affidavit,
10 more than one affidavit may be made.

11 The copy of the records shall be separately enclosed in a sealed en-
12 velope or wrapper on which the title and number of the action, name and
13 address of the witness and the date of the subpoena are clearly inscribed.
14 If return of the copy is desired, the words “return requested” must be
15 inscribed clearly on the sealed envelope or wrapper. The sealed envelope
16 or wrapper shall be delivered to the clerk of the court. *Thirty days after*
17 *termination of the case, records which are not introduced in evidence or*
18 *required as part of the record may be destroyed or returned to the cus-*
19 *todian of the records who submitted them if return has been requested*
20 *after notice is given.*

21 The reasonable costs of providing the copying of the records may be
22 demanded of the party causing the subpoena to be issued. If the costs
23 are demanded, the records need not be produced until the costs of cop-
24 ying are advanced.

25 (c) The subpoena shall be accompanied by an affidavit to be used by
26 the records custodian. ~~The subpoena and affidavit shall be in substantially~~
27 ~~the following form:~~

28 **Subpoena of Business Records**

29 State of Kansas

30 County of _____

31 ~~—(1) You are commanded to produce the records listed below before~~

32 _____

33 ~~—(Officer at Deposition) _____ (Judge of the District Court)—~~

34 at _____

35 (Address)

36 in the City of _____, County of _____, on the _____ day of _____,

37 19____, at _____ o'clock ____ m., and to testify on behalf of the _____ in an

38 action now pending between _____, plaintiff, and _____,

39 defendant. Failure to comply with this subpoena may be deemed a contempt of the court.

40 ~~—(2) Records to be produced. _____~~

41 _____

42 _____

43 _____

1 —(3) You may make written objection to the production of any or all of the records listed
2 above by serving such written objection upon _____ at _____
3 (Attorney) (Attorney's Address)

4 (within 14 days after service of this subpoena) (on or before _____, 19____). If
5 such objection is made, the records need not be produced except upon order of the court.

6 —(4) Instead of appearing at the time and place listed above, it is sufficient compliance
7 with this subpoena if a custodian of the business records delivers to the clerk of the court
8 by mail or otherwise a true and correct copy of all the records described above and mails a
9 copy of the affidavit below to

10 _____ at _____
11 (Requesting Party or Attorney) (Address of Party or Attorney)

12 within 14 days after receipt of this subpoena.

13 —(5) The copy of the records shall be separately enclosed in a sealed envelope or wrapper
14 on which the title and number of the action, name and address of the witness and the date
15 of this subpoena are clearly inscribed. If return of the copy is desired, the words "return
16 requested" must be inscribed clearly on the sealed envelope or wrapper. The sealed enve-
17 lope or wrapper shall be delivered to the clerk of the court. *Thirty days after termination*
18 *of the case, records which are not introduced in evidence or required as part of the record*
19 *may be destroyed or returned to the custodian of the records who submitted them if return*
20 *has been requested after notice has been given.*

21 —(6) The records described in this subpoena shall be accompanied by the affidavit of a
22 custodian of the records, a form for which is attached to this subpoena.

23 —(7) If the business has none of the records described in this subpoena, or only part
24 thereof, the affidavit shall so state, and the custodian shall send only those records of which
25 the custodian has custody. When more than one person has knowledge of the facts required
26 to be stated in the affidavit, more than one affidavit may be made.

27 —(8) The reasonable costs of copying the records may be demanded of the party causing
28 this subpoena to be issued. If the costs are demanded, the records need not be produced
29 until the costs of copying are advanced.

30 —(9) The copy of the records will not be returned unless requested by the witness.

31 _____
32 _____ Clerk of the District Court

33 [Seal of the District Court]

34 Dated _____, 19____.

35 Affidavit of Custodian of Business Records

36 State of _____

37 County of _____

38 —I, _____, being first duly sworn, on oath, depose and say that:

39 —(1) I am a duly authorized custodian of the business records of _____ and
40 have the authority to certify those records.

41 —(2) The copy of the records attached to this affidavit is a true copy of the records
42 described in the subpoena.

43 —(3) The records were prepared by the personnel or staff of the business, or persons

1 acting under their control, in the regular course of the business at or about the time of the
2 act, condition or event recorded.

3 _____
4 _____ Signature of Custodian

5 Subscribed and sworn to before the undersigned on _____
6 _____

7 _____ Notary Public

8 My Appointment Expires:
9 _____

10 Certificate of Mailing

11 I hereby certify that on _____, 19____, I mailed a copy of the above affidavit
12 to

13 _____ at _____

14 (Requesting Party or Attorney) (Address of Party or Attorney)

15 by depositing it with the United States Postal Service for delivery with postage prepaid.

16 _____
17 _____ Signature of Custodian

18 Subscribed and sworn to before the undersigned on _____
19 _____

20 _____ Notary Public

21 My Appointment Expires:
22 _____

23 (d) Any party may require the personal attendance of a custodian of
24 business records and the production of original business records by caus-
25 ing a subpoena duces tecum to be issued which contains the following
26 statements in lieu of paragraphs (4), (5), (6), (7) and (8) of the subpoena
27 form described in subsection (c):

28 The personal attendance of a custodian of business records and the
29 production of original records is required by this subpoena. The proce-
30 dure for delivering copies of the records to the clerk of the court shall
31 not be deemed sufficient compliance with this subpoena and should be
32 disregarded. A custodian of the records must personally appear with the
33 original records.

34 (e) Notice of intent to request the issuance of a subpoena pursuant
35 to this section where the attendance of the custodian of the business
36 records is not required shall be given to all parties to the action at least
37 10 days prior to the issuance thereof by the party requesting issuance of
38 the subpoena. A copy of the proposed subpoena shall also be served upon
39 all parties along with such notice. In the event any party objects to the
40 production of the documents sought by such subpoena prior to its issu-
41 ance, the subpoena shall not be issued until further order of the court in
42 which the action is pending. If receipt of the records makes the taking of
43 a deposition unnecessary, the party who caused the subpoena for the

1 business records to be issued shall cancel the deposition and shall notify
2 the other parties to the action in writing of the receipt of the records and
3 the cancellation of the deposition.

4 After the copy of the record is filed, a party desiring to inspect or copy
5 it shall give reasonable notice to every other party to the action. The notice
6 shall state the time and place of inspection. *Thirty days after termination*
7 *of the case*, records which are not introduced in evidence or required as
8 part of the record ~~shall~~ *may* be destroyed or returned to the custodian of
9 the records who submitted them if return has been requested *after notice*
10 *has been given*.

11 Sec. 2. K.S.A. 2003 Supp. 60-245a is hereby repealed.

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