

SENATE BILL No. 334

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

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

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

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

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

(2) in any civil case, and in 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 the attorney general has been given an opportunity to appear and be heard on the question of the validity of the statute or constitutional provision.

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

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

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

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

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

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

(g) This section shall 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.

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

(1) Is given an unconditional right to intervene by a statute; or
(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter substantially impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

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

(A) Is given a conditional right to intervene by a statute; or
(B) has a claim or defense that shares with the main action a common question of law or fact.

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

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

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

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

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

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

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

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

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.