

JOINT REPORT OF THE JUDICIAL COUNCIL
CIVIL CODE AND CRIMINAL LAW ADVISORY COMMITTEES
ON HOUSE BILL 2114

DECEMBER 4, 2015

On May 27, 2015, Representative John Barker requested that the Kansas Judicial Council study House Bill 2114 relating to subpoenas of nonparty business records under K.S.A. 60-245a. When the Judicial Council met on June 5, 2015, it referred the study to the Civil Code Advisory Committee. However, amendments to K.S.A. 60-245a would also impact criminal procedure because the criminal procedure statutes refer to the civil code for issuing and enforcing subpoenas. Due to the wider applicability of K.S.A. 60-245a beyond civil litigation, the Civil Code Advisory Committee and Criminal Law Advisory Committee later agreed to meet jointly to conduct the study. A copy of HB 2114 is attached at page 10.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Civil Code and Criminal Law Advisory Committees are:

Civil Code Advisory Committee

J. Nick Badgerow, Chair; Overland Park
James M. Armstrong; Wichita
Hon. Terry L. Bullock; Topeka
Prof. James M. Concannon; Topeka
Hon. Bruce T. Gatterman; Larned
Allen G. Glendenning; Great Bend
John L. Hampton; Lawrence
Hon. Marla L. Luckert; Topeka
Hon. Kevin P. Moriarty; Olathe
Donald W. Vasos; Fairway
Angel Zimmerman; Topeka

Criminal Law Advisory Committee

Stephen E. Robison, Chair; Wichita
Sen. Terry Bruce; Hutchinson
Sal Intagliata; Wichita
Ed Klumpp; Tecumseh
Patrick M. Lewis; Olathe
Prof. Joel Meinecke; Topeka
Steven L. Opat; Junction City
Hon. Cheryl A. Rios; Topeka
Nicole Romine; Goodland
Rep. John Rubin; Shawnee
John Settle; Larned
Ann Swegle; Wichita
Kirk Thompson; Topeka
Ron Wurtz; Topeka

BACKGROUND

HB 2114 was introduced in the House Judiciary Committee, where a hearing was held on February 5, 2015. Upon accepting Representative Barker's request to study the bill, the Judicial Council originally referred the study to the Civil Code Advisory Committee. However, because of the overlap with criminal law in the area of subpoenas, the Civil Code Advisory Committee and Criminal Law Advisory Committee later agreed to meet jointly to conduct the study.

HB 2114 contains amendments to K.S.A. 60-245a, which deals with subpoenas of business records from a nonparty. The purpose of K.S.A. 60-245a, passed in 1985, was to ease the burden on nonparties whose business records were relevant to a pending action. Before the statute was enacted, a nonparty owner of the business records, or a designated records custodian, was required to physically appear with the records, either for a deposition or in response to a subpoena duces tecum. The records custodian may also have been required to testify in a trial on the matter to authenticate the documents. K.S.A. 60-245a provided a process through which the nonparty could produce the records, along with a specifically worded affidavit, without having to make an appearance. The affidavit served to authenticate the documents, which eliminated any need for the records custodian to testify at trial. The process proscribed in K.S.A. 60-245a is a common discovery tool used to obtain records from nonparties.

HB 2114 was introduced to deal with a situation, which had arisen in two cases, in which K.S.A. 60-245a was used to subpoena nonparty business records concerning a person who was not a party to the case. In one of the cases, which was a divorce action, the wife's counsel reviewing husband's bank records found cancelled checks payable to a woman with whom the wife believed her husband was having an affair. The wife's counsel then used K.S.A. 60-245a to subpoena the bank records of the other woman. Under K.S.A. 60-245a, the requestor of nonparty business records must give notice to all other parties of the intent to issue a subpoena, and the process provides for an opportunity to object before the records are produced. Not being a party to the divorce case, the other woman was not entitled to notice under the statute that her financial records were being subpoenaed. The amendments to the statute proposed in HB 2114 were intended to provide notice to a nonparty when records relating to that nonparty are subpoenaed under K.S.A. 60-245a.

HB 2114 also sought to rectify an unrelated issue concerning notice of receipt of the subpoenaed records. Prior to 2010, the person to whom the subpoena was directed sent the requested records to the clerk of the court. The statute was amended in 2010 to require the records to be sent directly to the requesting party, but no provision was included that requires the requesting party to notify the other parties that the records have been received. HB 2114 contains a new subsection to K.S.A. 60-245a, (b)(3)(C), that would require the requesting party to send notice to all other parties when the requested records are received.

METHOD OF STUDY

The joint Committee met three times during the fall of 2015, once in person and twice by telephone conference. The joint Committee reviewed a number of background materials including: HB 2114; minutes and written testimony offered by proponents when the bill was heard in House Judiciary; and written materials submitted by interested parties at the joint Committee's meeting held August 14, 2015. In addition, the joint Committee invited a number of agencies to its August 14 meeting, and the attendees included: Jennifer Bates, Kansas Department of Revenue; Jeff Kruske, Ryan Kriegshauser, and Thomas Knutsen, Kansas Securities Commission; Meghan Stoppel, Kansas Attorney General; Patrick Vogelsberg, Kansas County and District Attorneys Association; and Ron Nelson, practicing attorney and proponent of HB 2114.

COMMITTEE DISCUSSION

Notice of Subpoena and Standing to Object

At the outset of the discussion, the majority of the joint Committee was in favor of exploring the possibility of amending K.S.A. 60-245a to require that if business records relating to a nonparty are subpoenaed, that nonparty must be given notice of the intent to issue the subpoena. None of the 25 attorney members of the joint Committee had ever seen this issue arise nor heard of a similar occurrence. Professor Jim Concannon, who has taught civil procedure for many years at Washburn Law School, noted that he had not seen any discussion of this issue arising under the federal rules. The joint Committee proceeded to hear from the agency representatives who were present at the first meeting and who had serious concerns about the proposed amendments to K.S.A. 60-245a.

One of the primary concerns expressed by the represented agencies was the effect the amendments would have on investigations. Many Kansas agencies conduct both civil and criminal investigations, issuing civil, criminal, and administrative subpoenas as part of the investigative process. The code of criminal procedure, as well as many of the statutes that confer administrative subpoena power on state agencies, refer to the code of civil procedure for issuing and enforcing subpoenas. Thus, in order to retain the agencies' ability to obtain documents without tipping off a suspect, such agency actions would either have to be specifically excluded from the application of the new notice requirement, or the entire law of subpoenas in Kansas would have to be uncoupled so that criminal and administrative matters no longer rely on the subpoena provisions of the code of civil procedure.

The joint Committee was not in favor of the idea of creating new statutes for criminal and administrative subpoenas. The current statutory scheme has been in place for half a century, and it works well. It is convenient to have the governing procedure for all subpoenas located in one place, and there would be a high risk of unintended consequences to attempt to separate the procedures.

The joint Committee was in agreement with the agency attorneys who expressed concern about the impact that HB 2114's new notice provision would have on civil, criminal, and administrative investigations. It is imperative to these agencies' investigative functions to be able to gather information without tipping off the subject of an investigation. Some agencies, such as the Office of the Kansas Securities Commissioner (KSC) under K.S.A. 17-12a602, are statutorily

empowered to conduct "private" investigations. Further, the Kansas Supreme Court has specifically held that the KSC's power to conduct private investigations includes the power to require confidentiality. In *Brant v. Bank of America*, 272 Kan. 182, 31 P.3d 952 (2001), the court held that the KSC has the authority to prohibit a bank from notifying its customers of the KSC's subpoenas. Thus, the notice requirement in HB 2114 conflicts with both statutory and case law.

The agency representatives also expressed concern about the language used in the bill. The additions in HB 2114 to K.S.A. 60-245a(b)(1)(A) were as follows:

"Not less than 14 days before issuance of a nonparty business records subpoena, the requesting party must give notice to all parties and any person whose individual or jointly held personal or business records are requested of the intent to request the subpoena. A copy of the proposed subpoena must be served on all parties and any person whose individual or jointly held personal or business records are requested with the notice. If prior to the issuance of the subpoena any party or any person whose individual or jointly held personal or business records are requested objects to the production of the records sought, the subpoena must not be issued unless ordered by the court."

The proposed additional language is problematic. First, the language refers to persons whose individual or jointly held "personal or business records" are requested. The purpose of K.S.A. 60-245a is to allow a party to subpoena the business records of a nonparty. The records, regardless of their content, are business records belonging to the recipient of the subpoena. Thus, it is not clear what records are being described in the bill. The language also would operate to impose a new requirement to give notice to other persons in addition to the parties, but it is not clear who would be entitled to notice. Is it anyone who has an interest in the records? Is it anyone whose name appears in the records? In the case of business entities with multiple officers, members, shareholders, or partners, is each person entitled to notice? If the subpoena is requesting records in which the existence or identity of account holders, customers, etc. is unknown, how can the requestor of the subpoena know who should receive the notice?

Although the joint Committee could craft language that would be more specific, such as focusing on notice only to a person who is *named* in the subpoena, that would not eliminate the problems the notice requirement would cause for investigative agencies. The joint Committee worked extensively on drafting new language that would exempt government entities from the notice requirement during the course of an investigation. The agencies, however, continued to assert that any new notice requirement should not apply to the agencies at all. Some joint Committee members disagreed with such a blanket exemption. It was thought that once an investigation is completed and a case has been filed, the agency becomes a party to the civil or criminal action and should be held to the same rules as other parties. Ultimately, the joint Committee was opposed to recommending amendments that could be problematic for investigative agencies or have other unintended consequences.

After thorough discussion, the joint Committee agreed that it would not recommend amending K.S.A. 60-245a to require any additional notice. As noted, the joint Committee was cognizant that under the Kansas codes of criminal procedure, civil procedure, and administrative procedure, the issuance of subpoenas is governed by K.S.A. 60-245a, and amendments made to deal with regular civil litigation will also affect other areas of law. Kansas law concerning subpoenas under K.S.A. 60-245a currently works well, and the joint Committee was wary of introducing problems and unintended consequences by amending the statute, especially when the problem sought to be addressed had only arisen in two known cases. Another factor that was relevant to the joint Committee's conclusion is that the records being sought by subpoena under K.S.A. 60-245a are business records that belong to the recipient of the subpoena. Under the federal rules, the nonparty about whom records are sought from a nonparty generally would have no cognizable interest to protect. There are cases under the federal rules in which a nonparty in that situation has been allowed to intervene to assert a privilege claim, but business records are rarely privileged.

The records involved in the divorce case that was the catalyst for HB 2114 were bank records, which are not privileged. In fact, the Kansas Supreme Court has held that an individual has no legitimate expectation of privacy in financial records held by a third party. *State v. Schultz*, 252 Kan. 819, 850 P.2d 818 (1993). This joint Committee, shortly before taking up HB 2114, reviewed HB 2302 and concluded it would recommend against passage of that bill, which would have instituted a right to financial privacy act in Kansas.

Finally, the joint Committee considered that in the vast majority of cases that it could imagine in which this issue might arise, the nonparty about whom records might be sought under K.S.A. 60-245a has some type of relationship with one of the parties and will likely be told about the subpoena. Many banks' privacy policies require the bank to tell a customer when the customer's records are subpoenaed unless that disclosure is otherwise prohibited by law. The joint Committee concluded that it would recommend against the part of HB 2114 that imposes a new notice requirement, but retain the idea that a person who is in the situation of the other woman in the divorce scenario would have standing to object to production of the records. This result provides adequate protection in a situation such as the divorce case presented to the joint Committee – which is apparently not a common occurrence – yet avoids the myriad of potential issues associated with amending the statute to mandate a new notice procedure.

The joint Committee recommends against the passage of HB 2114, but does recommend a new subsection (b)(2) to K.S.A. 60-245a dealing with objections to the subpoena. The proposed new subsection provides that "any nonparty named in the description of records requested by the subpoena may object. . ." The recommended amendments to the statute are set forth at the end of this report, beginning at page 7.

Notice of Receipt of Subpoenaed Records

Through the addition of new subsection (b)(3)(C) to K.S.A. 60-245a, HB 2114 also sought to rectify an issue that arose when the statute was amended in 2010 to change the procedure for producing nonparty business records under K.S.A. 60-245a. Prior to 2010, the person to whom the subpoena was directed sent the requested records to the clerk of the court. The statute was amended in 2010 to require the records to be sent directly to the requesting party, but no provision was included in this revision that would require the requesting party to notify the other parties that the records have been received. The Committee has drafted a new subsection to deal with this procedural

omission, K.S.A. 60-245a(b)(6). The new subsection is tied to new subsection (b)(2) regarding a nonparty's right to object. In addition to requiring notice to all parties that the records have been received, the joint Committee also determined that the new language should take into consideration a nonparty who has filed an objection under new subsection (b)(2). If a nonparty named in the subpoena files an objection, but the court does not quash the subpoena, that nonparty also should be entitled to notice that the requested records have been received. The joint Committee then added language to what would now be subsection (b)(7) to allow that nonparty about whom records have been produced to inspect and copy the records. The recommended amendments to the statute are set forth at the end of this report, beginning at page 7.

CONCLUSION

The joint Committee recommends against the adoption of HB 2114. There have been only two cases brought to the joint Committee's attention that were the impetus for amending K.S.A. 60-245a to expand the persons to whom notice must be given of the intent to issue a subpoena for nonparty business records. If the statute applied only to regular civil litigation, it might be acceptable to tighten up the language used and require notice to persons specifically named in the description of records sought. However, K.S.A. 60-245a also governs the issuance of nonparty business records subpoenas in criminal and administrative matters, including during investigations. It is clear that the notice contemplated cannot apply to investigations, as the subpoena may be seeking records concerning the subject of the investigation, thereby informing the subject that an investigation is being conducted. Another solution suggested was to separate criminal and administrative matters from the coverage of K.S.A. 60-245a by drafting stand-alone subpoena provisions, but the joint Committee determined this would be unwise. The interrelationship of the civil, criminal, and administrative procedural codes relating to subpoenas currently works well, and the law for all subpoenas is conveniently located in one place. The risk of unintended consequences is great if an attempt were made to create separate provisions, or even to amend the statute to require the notice, but to exempt investigatory actions from the requirement.

Although the joint Committee was told of only two cases in which a problem arose relating to a nonparty not receiving notice of a subpoena of records involving the nonparty, members could imagine various scenarios in which something similar might occur. For the most part, the situations are those in which one of the parties has a relationship with the nonparty, and it is very likely the nonparty will learn of the subpoena without amending the statute to require notice. The joint Committee determined the nonparty should be allowed to stand up for himself or herself in such a case and recommends amending K.S.A. 60-245a to give a nonparty who is named in a subpoena of business records a statutory right to object to the subpoena's issuance. The joint Committee also recommends a minor amendment to improve procedure under the statute by requiring the requester of the records to send notice to the other parties when the records are received. If a nonparty who is named in the subpoena files an objection and the subpoena is not quashed, the nonparty also should be entitled to receive notice that the records have been received and to inspect or copy them if desired.

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 send 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 4), 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) *Objections.* ~~If prior~~ Prior to the issuance of the subpoena, any party or any nonparty named in the description of records requested by the subpoena may object ~~objects~~ to the production of the records sought. If an objection is filed, the subpoena must not be issued unless ordered by the court. If a nonparty files an objection, but the court orders the records relating to the nonparty be produced, the requesting party must give the nonparty notice of delivery of the records under subsection (b)(6).

(2 3) *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 4) 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 5) 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.

(6) Notice of delivery of requested records. Within seven days after receipt of the requested records, the requesting party must notify all parties and any nonparty to whom notice is required under subsection (b)(2) that the requested records have been delivered.

(5 7) Inspecting the record. After the copy of the records is delivered, a party or nonparty who received notice of delivery under subsection (b)(6) desiring to inspect or copy ~~them~~ the records 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~~ 8) *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.

HOUSE BILL No. 2114

By Committee on Judiciary

1-23

1 AN ACT concerning civil procedure; relating to the subpoena of nonparty
2 business records; amending K.S.A. 2014 Supp. 60-245a and repealing
3 the existing section.
4

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

6 Section 1. K.S.A. 2014 Supp. 60-245a is hereby amended to read as
7 follows: 60-245a. (a) *Definitions.* As used in this section:

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

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

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

25 (1) *Duties of requesting party.* (A) *Must give notice of intent.* Not less
26 than 14 days before issuance of a nonparty business records subpoena, the
27 requesting party must give notice to all parties *and any person whose*
28 *individual or jointly held personal or business records are requested* of the
29 intent to request the subpoena. A copy of the proposed subpoena must be
30 served on all parties *and any person whose individual or jointly held*
31 *personal or business records are requested* with the notice. If prior to the
32 issuance of the subpoena any party *or any person whose individual or*
33 *jointly held personal or business records are requested* objects to the
34 production of the records sought, the subpoena must not be issued unless
35 ordered by the court.

36 (B) *Requesting party to provide declaration form.* When the subpoena

1 is issued, it must be accompanied by a form of declaration that complies
2 with ~~paragraph subsection (b)(3)~~, to be completed by the records
3 custodian.

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

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

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

27 (i) The declarant or affiant is an authorized custodian of the records
28 and has authority to certify records;

29 (ii) the copy is a true copy of all the records described in the
30 subpoena that are in the business' possession, custody or control and
31 whether it is all or part of the requested records; and

32 (iii) the records were prepared by the personnel or staff of the
33 business, or persons acting under their control, in the regular course of the
34 business at or about the time of the act, condition or event recorded.

35 (B) *When none of the requested records is produced.* If the business
36 has none of the records described in the subpoena, a custodian of the
37 records of the business must submit a declaration pursuant to K.S.A. 53-
38 601, and amendments thereto, or an affidavit, stating that fact.

39 (C) *Notification required to allow access to and copying of requested*
40 *records. Within seven days after receipt of the requested records, the*
41 *requesting party shall notify every other party and any person whose*
42 *individual or jointly held personal or business records were requested to*
43 *allow access to and copying of such records.*

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

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

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

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

21 Sec. 2. K.S.A. 2014 Supp. 60-245a is hereby repealed.

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