

SENATE BILL No. 85

AN ACT concerning the secretary of state; relating to return of filings to corporations and limited partnerships; amending K.S.A. 17-6003, 17-7301, 17-7678 and 56-1a156 and repealing the existing sections.

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

Section 1. K.S.A. 17-6003 is hereby amended to read as follows: 17-6003. (a) When any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section, such instrument shall be executed as follows:

(1) The articles of incorporation shall be signed by the incorporator or incorporators, and any other instrument to be filed before the election of the initial board of directors, if the initial directors were not named in the articles of incorporation, shall be signed by the incorporator or incorporators. If any incorporator is not available by reason of death, incapacity, refusal or neglect to act, then the instrument may be signed by any person for whom or on whose behalf such incorporator was acting as employee or agent. The instrument shall state that the incorporator is not available and the reason therefor; that such incorporator was acting as employee or agent for or on behalf of such person; and that such person's signature is authorized.

(2) All other instruments shall be signed: (i) By any authorized officer of the corporation; (ii) if it appears from the instrument that there are no such officers, by a majority of the directors or by such directors as may be designated by the board; (iii) if it appears from the instrument that there are no such officers or directors, by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or (iv) by the holders of record of all outstanding shares of stock.

(b) The execution of any document required to be filed with the secretary of state pursuant to chapter 17 of the Kansas Statutes Annotated shall constitute an oath or affirmation, under the penalties of perjury, that the facts stated in the document are true.

(c) When any provision of this act requires any instrument to be filed with the secretary of state or in accordance with this section, such requirement means that:

(1) The original signed instrument shall be delivered to the office of the secretary of state, *where the instrument shall be recorded in an electronic medium*. Any signature on documents authorized to be filed with the secretary of state under the provisions of this act may be a facsimile, a conformed signature or an electronically transmitted signature;

(2) all taxes and fees authorized by law to be collected by the secretary of state in connection with the filing of the instrument shall be tendered to the secretary of state;

(3) upon delivery of the instrument, and upon tender of the required taxes and fees, the secretary of state shall certify that the instrument has been filed in the office of secretary of state by endorsing upon the ~~original signed instrument~~ *electronically-recorded document* the word "Filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon record the endorsed instrument in an electronic medium; and

(4) the secretary of state shall return ~~the original instrument as a certified copy of the original recorded instrument document~~, except this provision shall not apply to annual reports.

(d) Any instrument filed in accordance with subsection (c) shall be effective upon its filing date. Except where it has been determined otherwise by a court of competent jurisdiction, any instrument filed in accordance with subsections (c)(1) through (c)(4) prior to July 1, 1998, shall be deemed to be effective on the date it was so filed, unless a different effective date was specified for the instrument in accordance with this subsection, and the recording of such instrument with a register of deeds shall not be required in order for the instrument to take effect. Any instrument may provide that it is not to become effective until a specified date subsequent to its filing date, but such date shall not be later than 90 days after its filing date. If any instrument filed in accordance with subsection (c) provides for a future effective date and the transaction is terminated or its terms are amended to change the future effective date prior to the future effective date, the instrument shall be terminated or amended by the filing, prior to the future effective date, of a certificate

of termination or a certificate of amendment of the original instrument, executed and filed in accordance with this section. The certificate shall identify the instrument which has been terminated or amended, and shall state that the instrument has been terminated or the manner in which it has been amended.

(e) If another section of this act or any other law of this state specifically prescribes a manner of executing or filing a specified instrument or a time when such instrument shall become effective, which differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

(f) When any instrument authorized to be filed with the secretary of state under any provision of this act has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, such instrument may be corrected by filing with the secretary of state a certificate of correction of such instrument which shall be executed and filed in accordance with this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. In lieu of filing a certificate of correction, the instrument may be corrected by filing with the secretary of state a corrected instrument which shall be executed and filed in accordance with this section. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. An instrument corrected in accordance with this section shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the corrected instrument shall be effective from the filing date.

(g) When any corporation conveys any lands or interests therein by deed or other appropriate instrument of conveyance, such deed or instrument shall be executed on behalf of the corporation by any authorized officer of the corporation. Such deed or instrument, when acknowledged by such officer to be the act of the corporation, or proved in the same manner provided for other conveyances of lands, may be recorded in the same manner and with the same effect as other deeds. Corporations likewise shall have power to convey by an agent or attorney so authorized under power of attorney or other instrument containing a power to convey real estate or any interest therein, which power of attorney shall be executed by the corporation in the same manner as herein provided for the execution of deeds or other instruments of conveyance.

(h) If any instrument authorized to be filed with the secretary of state is filed and is inaccurately, defectively or erroneously executed or otherwise defective in any respect, the secretary of state shall not be liable to any person for the preclearance for filing, the acceptance for filing or the filing and indexing such instrument.

Sec. 2. K.S.A. 17-7301 is hereby amended to read as follows: 17-7301. (a) As used in this act, the words “foreign corporation” mean a corporation organized under the laws of any jurisdiction other than this state.

(b) No foreign corporation shall do any business in this state, through or by branch offices, agents or representatives located in this state, until it has filed in the office of the secretary of state of this state an application for authority to engage in business in this state as a foreign corporation. Such application shall be filed in accordance with K.S.A. 17-6003 and amendments thereto and shall include:

(1) A certificate issued within 90 days of the date of application by the proper officer of the jurisdiction where such corporation is incorporated or by a third-party agent authorized by the secretary of state attesting to the fact that such corporation is a corporation in good standing in such jurisdiction;

(2) a statement that the corporation is in good standing in the state of incorporation as of the date the application is signed;

(3) the address of the principal office of the corporation;

(4) the full nature and character of the business the corporation proposes to conduct in this state, including whether the corporation operates for profit or not for profit;

(5) the location of the registered office of the corporation in this state

and the name of its resident agent for service of process required to be maintained by this act;

(6) the date on which the corporation commenced, or intends to commence, doing business in this state; and

(7) an irrevocable written consent of the foreign corporation that actions may be commenced against it in the proper court of any county where there is proper venue by service of process on the secretary of state as provided for in K.S.A. 60-304, and amendments thereto, and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon an officer of the corporation.

The application shall be executed and filed in accordance with K.S.A. 17-6003, and amendments thereto.

(c) After receipt of the application and fee, if the secretary of state finds that it complies with the provisions of this section, the secretary of state shall record the original application and return ~~the original, certified a certified copy of the recorded document~~ in accordance with K.S.A. 17-6003, and amendments thereto. The certified copy of the ~~application recorded document~~ shall be prima facie evidence of the right of the corporation to do business in this state. The secretary of state shall not file such application unless:

(1) The name of the corporation is such as to distinguish it upon the records of the office of the secretary of state from the name of any other corporation, limited liability company or limited partnership organized under the laws of this state or reserved or registered as a foreign corporation, limited liability company or limited partnership under the laws of this state;

(2) the corporation has obtained the written consent of such other entity, which has the same name and such consent has been executed and filed with the secretary of state; or

(3) the corporation indicates, as a means of identification and in its advertising within this state, the state in which it is incorporated.

Sec. 3. K.S.A. 17-7678 is hereby amended to read as follows: 17-7678. (a) The original signed copy of articles of organization or any certificate to be filed pursuant to this act, shall be filed with the secretary of state, *where the instrument shall be recorded in an electronic medium*. A person who executes a certificate, statement or articles as an agent or fiduciary shall not be required to exhibit evidence of the person's authority as a prerequisite to filing. Any signature on any articles or certificate authorized to be filed with the secretary of state under any provision of this act may be a facsimile, a conformed signature or an electronically transmitted signature. Unless the secretary of state finds that any filing does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Certify that such document has been filed in the secretary of state's office by endorsing upon the ~~original filing~~ *electronically-recorded document* the word "filed" and the date and hour of the filing; in the absence of actual fraud, this endorsement is conclusive of the date and time of its filing;

(2) record the endorsed document in an electronic medium *and that electronic document shall become the original document*; and

(3) return ~~the original document, certified as a true~~ *a copy of the recorded document*, to the person who filed it or such person's representative.

(b) The articles of organization shall be amended as provided in a certificate of amendment or judicial decree of amendment upon the filing of the certificate of amendment or judicial decree of amendment with the secretary of state or upon the future effective date specified in the certificate of amendment. An inaccuracy in the articles of organization may be corrected by filing a certificate of correction with the secretary of state as provided in K.S.A. 17-7683, and amendments thereto. The articles of organization are canceled upon the issuance of a certificate of cancellation or certificate of merger or consolidation where the limited liability company is not the surviving or resulting entity by the secretary of state.

(c) The fee required by this act shall be paid at the time of the filing

of any articles of organization or any certificate to be filed pursuant to this act.

(d) The fee required by this act shall be paid for a certified copy of any paper on file pursuant to this act and the fee fixed pursuant to this act shall be paid for each page copied.

(e) The secretary of state may prescribe a telefacsimile communication fee in addition to any filing fees to cover the cost of such services. This fee must be paid prior to acceptance of a telefacsimile communication and shall be deposited into the information and copy service fee fund.

(f) Upon filing the articles of organization of a limited liability company organized to exercise powers of a professional association or professional corporation, the limited liability company shall file with the secretary of state a certificate by the licensing body, as defined in K.S.A. 74-146, and amendments thereto, of the profession involved that each of the members is duly licensed to practice that profession, and that the proposed company name has been approved.

Sec. 4. K.S.A. 56-1a156 is hereby amended to read as follows: 56-1a156. (a) The original signed copy of the certificate of limited partnership, any certificates of amendment or cancellation and any judicial decree of amendment or cancellation shall be delivered to the secretary of state, *where the instrument shall be recorded in an electronic medium*. A person who executes a certificate as an agent or fiduciary shall not be required to exhibit evidence of the person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Certify that the certificate of limited partnership, certificate of amendment, certificate of cancellation or judicial decree of amendment or cancellation has been filed in the secretary of state's office by endorsing upon the ~~original certificate~~ *electronically-recorded document* the word "Filed" and the date and hour of the filing; in the absence of actual fraud this endorsement is conclusive of the date and time of its filing;

(2) record the endorsed certificate in an electronic medium *and that electronic document shall become the original document*; and

(3) return ~~the original document certified as a true~~ *a certified copy* of the recorded document, to the person who filed it or that person's representative.

(b) The certificate of limited partnership shall be amended as provided in a certificate of amendment or decree of amendment upon the filing of the certificate of amendment or judicial decree of amendment in the office of the secretary of state or upon the future effective date specified in the certificate of amendment or judicial decree of amendment. The certificate of limited partnership is canceled upon the filing of a certificate of cancellation or a judicial decree of amendment in the office of the secretary of state, upon the future effective date specified in the certificate of cancellation or a judicial decree or as specified in this act.

(c) The fee required by K.S.A. 56-1a605, and amendments thereto, shall be paid at the time of the filing of a certificate of limited partnership, a certificate of amendment or a certificate of cancellation.

(d) The fee required by K.S.A. 56-1a605, and amendments thereto, shall be paid for a certified copy of any paper on file pursuant to this act, and the fee fixed pursuant to K.S.A. 56-1a605, and amendments thereto, shall be paid for each page copied.

Sec. 5. K.S.A. 17-6003, 17-7301, 17-7678 and 56-1a156 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after July 1, 2010, and its publication in the statute book.

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

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.