

Approved: 2/15/96 ha  
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:06 a.m. on February 8, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Jill Grant - excused  
Rep. Broderick Henderson - excused  
Rep. Gary Merritt - excused

Committee staff present: Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Bob Nugent, Revisor of Statutes  
Jennifer Chaulk Wentz, Deputy Asst. Secretary of State  
Ron Smith, KS Bar Assn.  
Harriet Lange, KS Assn. of Broadcasters

Others attending: See attached list

Bob Nugent explained three bill requests made by the Kansas Department of Human Resources. One authorizes the recovery of attorney fees by the department while collecting wage claims, the second abolishes the division of labor management relations and employment standards, and the third would amend employment security law to correct federal conformity issues.

Rep. Packer made a motion to introduce the bills as committee bills. It was seconded by Rep. Becker. The motion passed.

Hearing on:

**HB 2745 - Establishing a set fine for a corporation to pay for failure to file an annual report on time.**

Jennifer Chaulk Wentz, Deputy Asst. Secretary of State, appeared before the committee as a proponent for **HB 2745**. The bill was introduced at the request of the Secretary of State. It changes the way in which the state collects penalty fees from corporations who are reinstating after forfeiture or expiration of their charters, or foreign corporations who have been doing business in Kansas, but have not qualified by filing with the secretary of state until after an annual report is past due. The Secretary of State believes that setting a flat penalty fee rate offers advantages over the current system. It would save time, as the fee could be listed directly on the reinstatement form, and thus save the time of notification of the amount of penalty, plus the added cost of postage. It will also save the staff time as they can process the reinstatement certificates quicker. (see Attachment 1) Ms. Wentz concluded her testimony by answering questions from the committee.

Chairman Lane asked the audience if there were additional conferees on the bill. None were present and he closed the hearing on **HB 2745**.

Hearing on:

**HB 2746 - Kansas fictitious name act**

Revisor Bob Nugent gave the committee a short briefing on the bill. The bill is identical to **1994 SB 580**, the Fictitious Names Registration Act, which passed the Senate. The purpose of the act is to give banks, businesses, government and citizens notice of who the real owners of non-SEC businesses happen to be, if the ownership is not readily available from the business name itself.

Ron Smith, Kansas Bar Association, appeared as a proponent of the bill. If a business does business under its registered legal name, it is easy to find out who they are doing business with, but it is not always easy to determine from the Secretary of State records who the real owners are. The bill would help businesses or consumers to know who they are actually dealing with because it would require the businesses to provide information to the public regarding the true business owners where a fictitious name is publicly used. The Kansas Bar Association has suggested two amendments to the bill as written. (see Attachment 2) He ended his appearance before the committee by answering questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S  
Statehouse, at 9:06 a.m. on February 8, 1996.

Jennifer Chaulk Wentz added that registering names with the Secretary of State's office does not give people ownership right to the name.

Harriet Lange, President and Executive Director of the Kansas Association of Broadcasters, appeared as an opponent of the bill in its current form. Because of the unique nature of their business, HB 2746 would burden them with filing new name changes oftener than most businesses. She asked that the committee consider adding the amendment that would exempt businesses like broadcasters, who are already on file with the Federal Communications Commission, from filing with the Secretary of State's office every name change that is made. (see Attachment 3)

Chairman Lane asked if anyone else present wanted to testify on HB 2746. No one responded and he closed the hearing on the bill.

The meeting was adjourned at 10:09 a.m.

The next meeting is scheduled for February 9, 1996.



Ron Thornburgh  
Secretary of State



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## STATE OF KANSAS

House Committee on Business, Commerce & Labor

February 8, 1996

Hearing on HB 2745

Chairman Lane and Members of the Committee:

Thank you for the opportunity to appear before you in support of HB 2745.

This bill was introduced at the request of the Secretary of State. The bill proposes to change the way in which the state collects penalty fees from corporations who are reinstating after forfeiture or expiration of their charters, or from foreign corporations who have been doing business in Kansas, but have not qualified by filing with the secretary of state until after an annual report is past due.

A corporation that is reinstating will routinely obtain from the secretary of state a reinstatement form and a sufficient number of blank annual report forms on which to file its past due annual reports. The corporation will complete these items and return them to the secretary of state for filing, along with a check for the amount of the filing fee for the certificate and the franchise tax due under each annual report.

Upon receipt of these documents, the filing clerk will calculate the amount of the penalty fee to be assessed, which is currently \$100, plus \$5 for each day the initial annual report is past due. Upon notifying the corporation what its penalty fee is, virtually every corporation in this situation will ask if there is any way to waive the penalty. The corporation will then send a letter requesting a waiver of its penalty, which the secretary of state reviews and assesses a penalty. The average penalty assessed by this office during the past five years is \$67 (low: \$59; high: \$84).

The Secretary of State believes that setting a flat penalty fee rate offers distinct advantages over the current structure. A flat fee saves time. The secretary of state can list the penalty fee directly on the reinstatement form, and the corporation will know exactly what it is and can submit it along with the form and annual reports. The corporation will not have to wait on notification of the amount of the penalty and will not have to take time to draft a letter requesting waiver of the penalty. In addition, the secretary of state's filing clerk will be able to process reinstatement certificates more quickly.

*House Business, Commerce & Labor*

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*2/8/96*

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*Attachment 1*

The monies collected by the secretary of state are paid to the credit of the general fund.  
The Secretary of State anticipates no loss to fund revenues from passage of this bill.

I will address any questions you may have at this time.

Jennifer Chaulk Wentz, Legal Counsel  
Deputy Assistant Secretary of State



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# Memorandum

TO: Members, House Business & Commerce Committee

FROM: Ron Smith, General Counsel

SUBJ: HB 2746, Fictitious Names Legislation.

DATE: February 8, 1996

In Kansas, a consumer or other business entity has the ability to find out ownership information about other businesses if those businesses operate as a corporation, a limited liability company or a limited liability partnership *if that entity does business under its registered legal name*. Those three business entities file with the Secretary of State, and file annual reports with the Secretary. A consumer who has a dispute with those corporations can easily determine from the Secretary of State's name the exact name of the corporation, LLP or LLC, and its registered agent. Many times disputes can be resolved before a lawsuit needs to be filed.

Contrast the above with any of the following:

1. a corporation that does business under another name (e.g. X corporation doing business as "ABC Electric Company.")
2. a general partnership that does business under its own name or another name (e.g. Mr. X, Mrs. Y, and Mr. Z doing business as X & Y Company, or ABC Electric Company)
3. a sole proprietor that does business under a name that does not include his or her full name (e.g. Mr. X does business as ABC Electric Company).

In the above case, the consumer or other business has no centralized source of information regarding the type of entity or owners of ABC Electric Company. Without that information it may be impossible for the wronged party to seek redress from the proper ownership interest.

The people who would use this law primarily would be other businesses. They want to know who they are *actually* dealing with. Many businesses extend other businesses credit. But they want to know who the owners are, not who the general manager is. If you are a consumer who is having trouble getting the product to work properly and you want help from the real owner because the general manager has been uncooperative, there is no way of finding that information out unless volunteered by the manager.

Missouri has a similar law and this bill is patterned after this Missouri law. R.S. Mo. Sec. 417.200 et seq. Their law dates from 1929.

*House Business, Commerce  
& Labor Committee*

*2/8/96  
Attachment 2*

Memorandum  
HB 2746  
KBA

In HB 2746, the KBA along with the Secretary of State's office, is proposing a relatively simple centralized filing of information in the above situation. The purpose of the fictitious names act is purely to *provide information to the public* regarding the true business owner where a fictitious name is publicly used. The proposed statute is not intended to create any exclusivity or other substantive rights in the fictitious name (such as establishing a trademark). Those rights are covered elsewhere in Federal and state law, and in case law.

In discussions with interested parties, we would suggest two amendments:

1. The legal name of a general partnership should be defined as any name that includes all the names of the general partners. If any name does NOT include all the names of general partners, it is a fictitious name and must register under this act. Currently, general partnerships have a resident address of the partnership but only one general partner need be listed.
2. Broadcasters are already regulated under the Federal Communications Commission and must file with that agency accurate ownership information. We suggest an exemption for business entities whose ownership information is filed with a federal agency. This would exempt not only broadcasters but also publicly held stock corporations. I have attempted an amendment in this regard in the attached handout.

Trusts created as part of estate plans do not have "legal names" but they often run or carry on businesses under assumed business names. Thus any trust would have to register under this act. This is different from current law, since many trusts are filed with banks and other trustees but otherwise are not publicly known. On the other hand, this act is not asking for operational information about the trust, only an indication that it exists.

Thank you.

[KBA suggested amendments are in boldfaced italics print.]

HOUSE BILL No. 2746  
By Committee on Judiciary 1-25

AN ACT enacting the Kansas fictitious name act; providing for certain requirements related to filing and registration; penalties.

Be It Enacted by the Legislature of the State of Kansas:

Section 1. As used in this act, unless the context requires otherwise, "fictitious name" means any name, other than the legal name, used by any individual *or group of individuals*, general partnership, limited partnership, corporation, limited liability company, trust or other entity. *A general partnership is a fictitious name under this act unless the legal name of such partnership includes all the general partners in the name.*

Sec. 2. No individual, general partnership, limited partnership, corporation, limited liability company, trust or other entity shall conduct any business in this state under a fictitious name unless it first files with the secretary of state, in duplicate, a certificate supplied or approved by the secretary of state which includes:

- (a) (1) The fictitious name under which business is being or will be conducted by the applicant;
- (2) the applicant's name and the street address, city, state and zip code of the applicant's principal office;
- (3) a statement of 25 words or less of the character of business to be conducted under the fictitious name;
- (4) the name of the state under whose laws the entity is organized, specifying the type of business entity as either a sole proprietorship, general partnership, limited partnership, corporation, limited liability company, trust or other entity, specifying the type of such other entity;
- (5) if a general partnership, the name and residential address of a general partner; and
- (6) if a trust, the name and residential address of a trustee; and
- (b) the date the fictitious name was first used in Kansas.

Sec. 3. (a) Any filing under the provisions of this act shall be executed as follows:

- (1) If an individual, by such individual;
- (2) if a corporation, by an authorized officer;
- (3) if a partnership, whether general or limited, by a general partner;
- (4) if a limited liability company, by a manager or if there is no manager, by a member;

- (5) if a trust, by a trustee; and
  - (6) if any other entity, by a person authorized to sign on behalf of the entity.
- (b) The execution of a filing constitutes an oath or affirmation, under the penalties of perjury, that the facts stated in the certificate are true.

Sec. 4. Every filing under the provisions of this act shall be accompanied by a filing fee of \$10. The secretary of state shall remit all moneys received by the secretary under this act to the state treasurer at least monthly. Upon receipt of such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the fictitious name fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person or persons designated by the secretary.

Sec. 5. Any individual, general partnership, limited partnership, corporation, limited liability company, trust or other entity who engages in or transacts any business in this state under a fictitious name after January , 1998, without first complying with this act shall be subject to a penalty of \$100. Any business entity shall have the right to be heard by the secretary of state upon the matter of the penalty. For good cause shown, the secretary of state may waive all or part of the penalty.

Sec. 6. Registration under the provisions of this act is not intended to provide any substantive or exclusive right to the use of a particular fictitious name. Registration under the provisions of this act does not bar the use or registration under the provisions of this act of the same name as the legal or fictitious name of any sole proprietorship, general partnership, limited partnership, corporation, limited liability company, trust or other entity. Nothing herein shall adversely affect the rights or the enforcement of rights in the fictitious name acquired in good faith at any time at common law.

Sec. 7. (a) Registration of a certificate under the provisions of this act shall be effective for a term of five years from the date of registration.

(b) Whenever any business entity registered under the provisions of this act changes its business activities and such change affects any of the information contained on such entity's certificate, an amendment to the certificate shall be filed with the secretary of state within 30 days after such change.

Sec. 8. If, after filing under the provisions of this act, an applicant is dissolved, surrenders or forfeits its rights to do business in Kansas, or ceases to do business in Kansas under a fictitious name, such applicant shall cancel its registration under the provisions of this act by filing with the secretary of state a cancellation form supplied or approved by the secretary of state.

Sec. 9. *This act shall not apply to business entities required to file ownership information with a central registry of any agency of the federal government if such ownership information is reasonably available to the public from the federal agency.*

Sec. 10. This act shall be known and may be cited as the Kansas fictitious name act.

Sec. 11 This act shall take effect and be in force from and after its publication in the statute book.





*Kansas Association of Broadcasters*

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Testimony before the House Committee on Business, Commerce and Labor

**RE: HB 2746**

By Harriet Lange, President/Executive Director

Kansas Association of Broadcasters

February 8, 1996

Thank you Mr. Chairman and Members of the Committee. I am Harriet Lange, president and executive director of the Kansas Association of Broadcasters. We serve a membership of radio and television stations in Kansas and we appreciate the opportunity to appear before you on HB 2746.

Because of the unique nature of our business and how we market and promote ourselves, this bill would require Kansas radio and television stations (already overburdened with paperwork required by federal regulation) to file yet more paper with the state. For what purpose and for whose benefit?

Take for example a radio station, KQTP FM. Its license holder's legal name is Shawnee Broadcasting Corp. "Fictitious" names that would have to be filed under this bill are its call letters - KQTP FM - and its promotional name - Oldies 102.9. If next year, the station changes format to a Country music format and discontinues use of "Oldies 102.9", the station would be required to notify the Secretary of State of that fact AND file its new promotional name of "New Country 102.9". The same would apply if the station changes call letters, address, or business structure.

Although HB 2746 is not directed at Kansas broadcasters since we're not the source

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2/8/96  
Attachment 3*

of the problem being addressed, its passage in its current form, would disproportionately burden broadcasters because of the nature of our business and our marketing and promotional techniques.

We urge you to adopt an amendment that would exempt businesses, like broadcast stations, that must already file this information with another government agency. In the case of broadcasters, most of this information would be on file with the Federal Communications Commission, the federal agency that regulates broadcasters and issues broadcast licenses.

Thank you for your consideration.