

Approved: 4/3/98  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 10, 1998 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)  
Representative Gilmore (excused)  
Representative Mayans (excused)  
Representative Shriver (excused)  
Representative Ruff (excused)  
Representative Adkins (excused)  
Representative Mays (excused)  
Representative Swenson (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Jan Brasher, Committee Secretary

Conferees appearing before the Committee:

Ron Smith, Kansas Bar Association  
Richard Hayse, Attorney, KBA  
Karen France, Association of Realtors  
Judy Moler will  
Marilyn Nichols, Shawnee County Register of Deeds

Others attending: See attached list

The Chair called the meeting to order.

A motion was made by Representative Dahl, seconded by Representative Powell to approve the minutes for: 1/22/98, 1/26/98, 1/27/98, 1/28/98, 1/29/98, 2/2/98, 2/11/98, 2/16/98, 2/17/98. The motion carries.

**SB 472: Limited liability companies, formation, articles of organization and dissolution**

Ron Smith, KBA, introduced Richard Hayse an attorney and member of the Kansas Bar Association.

Conferee Hayse testified in support of **SB 472** and **SB 473**. The conferee stated that several provisions in Kansas statutes relating to limited liability companies and limited partnerships were designed to assist these organizations in passing the old IRS test. The new IRS regulations substituted a simple "check the box" system to allow the entity to simply choose between whether it would be taxed as a partnership or taxed as a corporation.

Conferee Hayse stated that **SB 472** allows for the formation of a one person limited liability company. The bill allows for the continuation of the entity upon death, retirement, resignation, expulsion, bankruptcy or dissolution of a member unless remaining members elect to dissolve. Conferee Hayse stated that another change accomplished by this bill is that it allows limited liability companies to elect an indefinite duration of existence. (Attachment 1)

Referencing **SB 472**, Conferee Hayse stated that the IRS eliminated the four-part test for determination to tax as an entity, thus requiring a change in the Kansas statutes.

Karen France, Director, Governmental Affairs, Kansas Association of Realtors, testified in support of **SB 472**. The conferee discussed the benefits of sole proprietorships to the real estate business. (Attachment 2)

The Chair closed the hearing on **SB 472**.

**SB 473: Limited partnerships, dissolution**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m.  
on March 10, 1998.

Conferee Hayse discussed the benefits of passing **SB 473** concerning limited partnerships. The conferee stated that this bill will "reverse the polarity" that currently exists. The conferee stated that this bill would change the norm by raising the presumption that the limited partnership continues unless the remaining partners vote to dissolve, or, where there is no remaining general partner after withdrawal, when the limited partners fail to appoint a replacement general partner within 90 days. The conferee stated that the changes in both **SB 472** and **SB 473** will allow for more continuity of businesses. Conferee Hayse stated that **SB 473** does not affect **SB 9**. (Attachment 1)

The Chair closed the hearing on **SB 473**.

**SB 474: Filing of articles of incorporation and other instruments of corporations**

Conferee Hayse testified in support of **SB 474**. The conferee stated that **SB 474** would remove any past or future "dual filing" requirement for certain documents relating to corporations in Kansas. The conferee stated that the filing of articles of incorporation/amendments, and the change in resident agent are currently being filed with both the register of deeds and the Office of the Secretary of State. The conferee noted that if all filings were made to the Secretary of State's office, the register of deeds will lose some income, but that office would not have to handle the filings. (Attachment 3)

During Committee discussion it was noted that the Senate amendment would grandfather this change in to pick up anything that might have been missed.

Judy Moler introduced Marilyn Nichols, Shawnee County Register of Deeds, who testified on **SB 474** pointing out two issues. The conferee stated that while this bill will eliminate the recording of incorporation documents at the local level, for counties that still utilize an abstracting system there may be some adverse impact on easy access to the records. The second issue of concern raised by the conferee was the financial impact in local offices. (Attachment 4)

The conferee discussed with Committee members issues concerning accessibility of the records.

The Chair closed the hearing on **SB 474**.

The Committee members began discussion on **SB 449**. The Chair offered language contained in a balloon to the bill which inserts language for the erroneous failure to give an instruction. (Attachment 5)

A motion was made by Representative Carmody, seconded by Representative Presta to adopt the balloon amendment to **SB 449**. The motion carries.

A motion was made by Representative Presta, seconded by Representative Powell to recommend **SB 449** favorably as amended for passage. The motion carries.

A motion was made by Representative Wilk, seconded by Representative Presta to recommend **SB 472** favorably and place it on the consent calendar. The motion carries.

A motion was made by Representative Presta, seconded by Representative Dahl to recommend **SB 473** favorably and place it on the consent calendar. The motion carries.

The Committee members discussed issues concerning **SB 474**.

A motion was made by Representative Powell, seconded by Representative Wilk to recommend **SB 474** favorably for passage. The motion carries.

The Chair discussed the Committee's agenda for the week.

The Chair adjourned the meeting at 4:20 p.m.

The next meeting is scheduled for March 11, 1998.

HOUSE JUDICIARY COMMITTEE  
GUEST LIST

DATE: 3/10/98

NAME	REPRESENTING
Melissa Wangemann	Sec. of State
Trish Copeland	Security Benefit
Marilyn L. Nichols	Register of Deeds
Gruddy Moler	Ks. Assoc. of Counties
Alfred Sealwell	KTEA
Suzi Hinson	The Hinson Group
Kathy Porter	OSA
Kathy Olsen	KBT
Larrie Ann Brown	KANS Govt Counsel

**COMMENTS IN SUPPORT OF SB 472 and SB 473  
BY RICHARD F. HAYSE  
ON BEHALF OF THE KANSAS BAR ASSOCIATION  
BEFORE THE  
KANSAS HOUSE JUDICIARY COMMITTEE**

March 10, 1998

I am Rich Hayse, an attorney in private practice in Topeka. I have been asked by the Kansas Bar Association to appear today in support of SB 472 and SB 473.

Both bills reflect a distinct change in the operating and tax environment for business organizations brought about by recent changes in IRS regulations. Those changes eliminated the application of four tests which had evolved to determine whether an entity was to be taxed as a corporation or as a partnership. Instead of the tests, the new IRS regulations substituted a simple "check the box" system to allow the entity to simply choose between whether it would be taxed as a partnership or taxed as a corporation.

Several of the provisions in Kansas statutes relating to limited liability companies and limited partnerships were designed to assist these organizations in passing the old IRS tests. With the elimination of the tests, those provisions are now more cumbersome than valuable.

**Senate Bill 472** relates to limited liability companies. It first allows the formation of one-person LLCs, similar to a one-person corporation. Existing Kansas law requires at least two persons to form an LLC. (Page 1, Section 1, Line 16.)

The bill also reverses the presumption of dissolution of the LLC upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a member. The current

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presumption is that an LLC *dissolves* upon such an event unless the remaining members vote to continue the LLC. (Page 1, Section 2, Lines 29-33; and Page 2, Section 3, Lines 17-32.) The change to be brought about by this bill would raise the presumption that the LLC *continues* in existence upon such an event, unless the members agree to dissolve it. (Page 2, Section 3, Line 33 through Line 1, Page 3.)

The bill also allows limited liability companies to elect indefinite duration of existence, rather than a fixed term as was previously thought necessary to meet the IRS tests. (Page 2, Section 3, Lines 10-15.)

**Senate Bill 473** accomplishes the same reversal of the presumption of dissolution for limited partnerships. The current presumption is that the limited partnership *dissolves* upon the withdrawal of the only general partner unless the limited partners vote to continue it and to appoint a new general partner. (Lines 19-27.)

This bill would change the norm by raising the presumption that the limited partnership *continues* unless the remaining partners vote to dissolve, or, where there is no remaining general partner after withdrawal, unless the limited partners fail to appoint a replacement general partner within 90 days. (Lines 30-40.)

These changes will permit those who form either limited liability companies or limited partnerships to build in more stability and continuity of life than was previously possible.



Kansas Association of REALTORS®  
The Voice for Real Estate™ in Kansas

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**TO:** THE HOUSE JUDICIARY COMMITTEE  
**FROM:** KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS  
**DATE:** MARCH 10, 1998  
**SUBJECT:** SB 472, LIMITED LIABILITY COMPANIES

Thank you for the opportunity to testify. The Kansas Association of REALTORS® is in support of the provision of SB 472 which permits limited liability companies to consist of one member.

One of our members brought this issue to our attention in 1996 when the IRS finalized the rule which would permit an LLC to be treated as a sole proprietorship, rather than a corporation for tax purposes. Our member pointed out to us that this kind of business relationship could be beneficial for real estate practitioners as well as investors.

Just last year, the Kansas Real Estate Salesperson and Broker's law was amended to permit licensees to form an LLC and receive their commissions through the LLC. If a licensee does not have a licensed personal assistant or a spouse or team member with whom they work in tandem, it would be very difficult, if not impossible, to have a one-person LLC under existing law.

We ask for your support of this bill.

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COMMENTS IN SUPPORT OF SB 474  
BY RICHARD F. HAYSE  
ON BEHALF OF THE KANSAS BAR ASSOCIATION  
BEFORE THE KANSAS HOUSE JUDICIARY COMMITTEE

March 10, 1998

I am Rich Hayse, an attorney in private practice in Topeka. I have been asked by the Kansas Bar Association to appear today in support of SB 474.

The purpose and effect of SB 474 as amended is to remove any past or future "dual filing" requirement for certain documents relating to corporations in Kansas. Under present law, as interpreted by the Kansas Supreme Court, these corporate documents must not only be filed with the Kansas Secretary of State, but also with the register of deeds of the county where the registered office of the corporation is located.

Included are things like articles of incorporation and amendments, changes of registered agent, and merger and dissolution documents. Significantly, annual reports are not included and thus current information is only available from the secretary of state.

The Kansas Supreme Court has held that the failure to comply with this dual filing requirement can have drastic consequences, at least with regard to the initial articles of incorporation. Most recently, the Court held that an incorporator was personally liable for a corporate debt because the articles of incorporation were not also filed with the register of deeds after having been properly filed with the secretary of state. (*Fee Ins. Agency, Inc. v. Snyder*, 261 Kan. 414 (1997).)

The Kansas Court of Appeals first reached this kind of conclusion, interpreting the language of the 1972 general corporation code, in a 1981 case (*State ex. rel. McCain v. Construction Enterprises, Inc.*, 6 Kan. App. 2d 627). Thereafter the 1987 Legislature apparently attempted to change the operative language, but the Supreme Court held in the

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*Fee Insurance* case that the effort was ineffectual, based upon a reading of other portions of the statutes.

A business lawyer in Kansas has a wide range of entities to choose from to suit the client's needs. The choices include corporations, general partnerships, limited partnerships, limited liability companies, limited liability partnerships, business trusts, and several special purpose organizations such as credit unions. In each case (except general partnerships) the entity formally comes into existence upon filing the organizational document with the Kansas Secretary of State. To my knowledge, and counsel for the Secretary of State agrees, the only exception is that *corporate* existence does not commence until the articles of incorporation are also filed with the register of deeds of the county of the location of the corporation's registered office.

We utilize a central repository--the secretary of state--for essential filing under the Uniform Commercial Code, and the system works well. Anyone who now wants current information about a corporation would check with the secretary of state, not with the register of deeds. This is especially true with modern communications tools such as the Information Network of Kansas and other computer-assisted research tools which make the records of the Secretary of State equally accessible to someone in Johnson County or Johnson, Kansas.

I suggest there is no good reason to continue the dual filing requirement solely for corporations, which only serves as a trap for the unwary. Although the end to be achieved by SB 474 has been approved by the board of governors of the Kansas Bar Association, I suspect that most omissions in dual filing are not committed by lawyers, but by lay people and others who form corporations without being educated in the law. Thus this change, if adopted, would principally serve to remove a hidden trap for the citizens of Kansas, not to benefit any professional group.



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**REGISTER OF DEEDS**

**KANSAS**  
PRESIDENT Linda Fincham  
VICE-PRESIDENT Linda Massey

**ASSOCIATION**  
Sally Acres SECRETARY  
Marcia Johnson TREASURER

March 9, 1998

SENATE BILL 474

I am here today on behalf of the Kansas Register of Deeds Association. We thank you for the opportunity to provide input during your decision making process.

Our understanding of the intent of this bill is eliminate the recording of Incorporation documents at the local level. There are two issues that we wanted to bring to your attention concerning this proposal.

The first is that in counties that still utilize an abstracting system there may be some adverse impact on easy access to the records. This is something that you would need to verify or discuss with representatives of that industry. Although we live in the wonderful new world of technology, we must be aware that not everyone has the resources in place to utilize that technology. Open and accessible records are an important service for our citizens.

The second issue is that there will be a financial impact in the local offices. This would vary based on the size of the local entities, larger counties feeling a larger impact and smaller counties feeling a smaller impact, but the loss of recording fees for these documents is felt in every county. It is our belief that although we may not always remember all of the interconnections, that reducing revenue at the county has an impact somewhere else in the revenue system.

We want to assure the committee that currently we do have numerous inquiries for this information on a daily basis. Should this bill pass, this information access would then shift to the Secretary of State's office.

I would be more than happy to stand for any questions.

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*As Amended by Senate Committee*

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Session of 1998

## SENATE BILL No. 449

By Committee on Judiciary

1-15

10 AN ACT concerning crimes, criminal procedure and punishment; relating  
11 to lesser included offenses; amending K.S.A. 21-3107 and 22-3414 and  
12 repealing the existing sections.  
13

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

15 Section 1. K.S.A. 21-3107 is hereby amended to read as follows:  
16 21-3107. (1) When the same conduct of a defendant may establish the  
17 commission of more than one crime under the laws of this state, the  
18 defendant may be prosecuted for each of such crimes. Each of such  
19 crimes may be alleged as a separate count in a single complaint, infor-  
20 mation or indictment.

21 (2) Upon prosecution for a crime, the defendant may be convicted  
22 of either the crime charged or ~~an~~ a lesser included crime, but not both.

23 ~~An~~ A lesser included crime may be any of the following is:

24 (a) A lesser degree of the same crime;

25 (b) ~~a crime~~ a crime where all elements of the lesser crime are identical  
26 to some of the elements of the crime charged;

27 (c) an attempt to commit the crime charged; or

28 ~~(e) (d)~~ an attempt to commit a lesser degree of the crime charged;  
29 ~~or crime defined under subsection (2)(a) or (2)(b).~~

30 ~~(d)~~ a crime necessarily proved if the crime charged were proved.

31 ~~(3)~~ In cases where the crime charged may include some lesser crime,  
32 it is the duty of the trial court to instruct the jury, not only as to the crime  
33 charged but as to all lesser crimes of which the accused might be found  
34 guilty under the information or indictment and upon the evidence ad-  
35 duced. If the defendant objects to the giving of the instructions, the de-  
36 fendant shall be considered to have waived objection to any error in the  
37 failure to give them, and the failure shall not be a basis for reversal of the  
38 case on appeal.

39 ~~(4)~~ (3) Whenever charges are filed against a person, accusing the  
40 person of a crime which includes another crime of which the person has  
been convicted, the conviction of the lesser included crime shall not bar  
prosecution or conviction of the crime charged if the crime charged was  
43 not consummated at the time of conviction of the lesser included crime,

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1 but the conviction of the *lesser* included crime shall be annulled upon  
 2 the filing of such charges. Evidence of the person's plea or any admission  
 3 or statement made by the person in connection therewith in any of the  
 4 proceedings which resulted in the person's conviction of the *lesser* in-  
 5 cluded crime shall not be admissible at the trial of the crime charged. If  
 6 the person is convicted of the crime charged, or of ~~an~~ a *lesser* included  
 7 crime, the person so convicted shall receive credit against any prison  
 8 sentence imposed or fine to be paid for the period of confinement actually  
 9 served or the amount of any fine actually paid under the sentence im-  
 10 posed for the annulled conviction.

11 Sec. 2. K.S.A. 22-3414 is hereby amended to read as follows: 22-  
 12 3414. (1) The prosecuting attorney shall state the case and offer evidence  
 13 in support of the prosecution. The defendant may make ~~his~~ an opening  
 14 statement prior to the prosecution's offer of evidence, or may make such  
 15 statement and offer evidence in support ~~thereof~~ of such statement after  
 16 the prosecution rests.

17 (2) The parties may then respectively offer rebutting testimony only,  
 18 unless the court, for good cause, permits them to offer evidence upon  
 19 their original case.

20 (3) At the close of the evidence or at such earlier time during the  
 21 trial as the judge reasonably directs, any party may file written requests  
 22 that the court instruct the jury on the law as set forth in the requests.  
 23 The judge shall instruct the jury at the close of the evidence before argu-  
 24 ment and the judge ~~may~~, in ~~his~~ the judge's discretion, after the opening  
 25 statements, ~~may~~ instruct the jury on such matters as in ~~his~~ the judge's  
 26 opinion will assist the jury in considering the evidence as it is presented.  
 27 *In cases where there is some evidence which would reasonably justify a*  
 28 *conviction of some lesser included crime as provided in subsection (2) of*  
 29 *K.S.A. 21-3107 and amendments thereto, the judge shall instruct the jury*  
 30 *as to the crime charged and any such lesser included crime.*

31 The court shall pass upon the objections to the instructions and shall  
 32 either give each instruction as requested or proposed or refuse to do so,  
 33 or give the requested instruction with modification. All instructions given  
 34 or requested must be filed as a part of the record of the case.

35 The court reporter shall record all objections to the instructions given  
 36 or refused by the court, together with modifications made, and the rulings  
 37 of the court.

38 No party may assign as error the giving or failure to give an instruction,  
 39 including a *lesser included crime* instruction, unless ~~he~~ the party objects

40 ~~retro~~ before the jury retires to consider its verdict stating distinctly the  
 41 matter to which ~~he~~ the party objects and the grounds of ~~his~~ the objection  
 42 unless the instruction ~~is~~ clearly erroneous. Opportunity shall be given to  
 43 make the objections out of the hearing of the jury.

or the failure to give an instruction

5-3

1 (4) When the jury has been instructed, unless the case is submitted  
2 to the jury on either side or on both sides without argument, the prose-  
3 cuting attorney may commence and may conclude the argument. If there  
4 is more than one defendant, the court shall determine their relative order  
5 in presentation of evidence and argument. In arguing the case, comment  
6 may be made upon the law of the case as given in the instructions, as well  
7 as upon the evidence.

8 Sec. 3. K.S.A. 21-3107 and 22-3414 are hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its  
10 publication in the statute book.