

Approved: 2-2-98
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:12 a.m. on January 29, 1998 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Ron Smith, Kansas Bar Association (KBA)
John Wachter, KBA
Karen France, Kansas Association of Realtors
Richard Hayse, KBA
Sara Ullman, Register of Deeds Association

Others attending: See attached list

The minutes of the January 27 meeting were approved on a motion by Senator Bond and a second by Senator Schraad. Carried.

Bill Introduction:

At the request of the Chair, an act concerning jurors; relating to fees (amends KSA 43-171 was introduced and passed on a motion by Senator Feleciano and a second by Senator Schraad. Carried.

SB 472 - Limited liability companies relating to formation, articles or organization & dissolution

SB 473 - Limited partnerships relating to dissolution

SB 474 - Corporations relating to filing of articles of incorporation and other instruments

Conferee Smith, testifying in support **SB 472,473,474**, briefly summarized these three KBA bills. (attachment 1)

Conferee Wachter, a proponent of **SB 472** and **SB 473**, discussed two technical changes in the bills stating that **SB 472** allows for the formation of a single person limited liability company (LLC) and **SB 473** reverses the process for dissolution of the entity upon withdrawal of a member/general partner for either an LLC or Limited Partnership (LP). (attachment 2)

Conferee France, testifying in support of **SB 472**, discussed how this bill benefits real estate practitioners. (attachment 3) Following brief discussion by the Committee, Senator Schraad moved to pass **SB 472** and **SB 473** out favorably and place them on the consent calendar. Senator Donovan seconded. Motion carried.

Conferee Hayse testified in support of **SB 474**. He stated that the purpose of the bill is to remove the "dual filing" requirement for certain documents relating to corporations in Kansas. He stated that current law requires certain documents relating to corporations be filed both with the Secretary of State as well as the Register of Deeds. He cited several examples of situations where failure to file had drastic consequences. He expressed concern about the lay person who is not educated in the law and thus not aware of the dual filing requirement becoming a victim of this "hidden trap". (attachment 4) Discussion followed regarding introducing language that is curative so that people who have become entrapped can be released. The Chair requested Conferee Smith enter language to that effect and resubmit it to Committee.

Conferee Sara Ullman testified as neutral on **SB 474**. She expressed concern that because some counties still utilize a system that is not as advanced technologically as other counties, easy access to records will be hindered. Another issue she discussed was the financial impact this bill would have on local offices who depend on recording fees as part of their revenue. She stated that currently, registers of deeds have numerous inquiries for incorporation document information on a daily basis. (attachment 5) Inquiries by Committee and response by the conferee followed.

The meeting adjourned at 10:31 a.m. The next scheduled meeting is Monday, February 2

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-29-98

NAME	REPRESENTING
Jana F. Ullmann	Kansas Register of Deeds Assoc.
Karen Cole	KCDAA
Kathy Olson	ICBA
Heather Randall	Whitney Dawson, P.A.
Gayle Ann Brown	KS Govt. Counsel.
Michael Lee Smith	KIWA
Melissa Wangemann	Sec of State
Jamba Pourangon	KSOS
Tish Copeland	Security Benefit
Vickilyn Belsel	Budget
John Relat	Lifesaver Interloc
Karen Franci	Ks. Assn of REACTORS
JOHN H. WACHTER	Ks. BAR ASSN.
Richard Hayse	KS BAR ASSN
Ron Smith, Gina Nelson	KS Bar Assoc



KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

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Legislative Testimony

*SB 472
1-29-98
att #*

TO: Senate Judiciary Committee
FROM: Ron Smith
General Counsel
SUBJ: SB 472, 473, 474
DATE: January 29, 1998

Members of the Committee.

These three bills are KBA bills.

The latter, 474, ends an anomaly in our statutes that require attorneys filing corporation records to file a certified duplicate copy of the articles of incorporation with the Register of Deeds in the county where the corporation is domiciled. Frankly, no other business entities have this dual filing requirement, the public gets no benefit from this dual filing, it is a relic of the frontier, and with modern telephones and faxes, it makes sense to centralize all corporate records in one place – the secretary of state. Most people wanting information on corporations call the secretary of state anyway. Rich Hayse will discuss this matter with you more fully.

The other two bills, 472 and 473, allow “check a box” taxation elections for Limited Partnerships and LLCs. The check-a-box system comes about from federal tax laws. These bills come from a combined effort of our Tax, Probate and Corporation Sections. These formats are the prelude to a much bigger study by these three sections of the KBA this summer regarding check-a-box taxation for other business entities. The LLC bill does allow the formation of single person LLCs, which is similar to other state law, including Missouri. This statute allows Kansas to have similar laws to Missouri, thus avoiding the need to incorporate LLCs in that state for more favorable tax treatment.

John Wachter will discuss these issues with you.

KBA supports all three bills.

Thank you.

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Background:

In December, 1996, the IRS issued "check the box" regulations which allowed entities like Limited Liability Corporations (LLC) and Limited Partnerships (LP) to elect partnership tax treatment by checking a box. It no longer matters from a tax standpoint, therefore, whether these entities have certain traditional "partnership" or "corporate" characteristics. For example, prior to issuance of the check the box regulations, if an entity possessed three of the four corporate characteristics, i.e. limited liability, continuity of life, free transferability of ownership interests or centralized management, it was taxed as a corporation. The recently issued regulations permit more flexibility in the state law rules governing the structure of these entities without adversely affecting their income tax treatment, and prompted these revisions below.



KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
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FAX (785) 234-3813
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This issue and proposal had separate and significant review by the Corporation Section via William Wood II, and the Real Estate Probate section under Nancy Roush.

Proposals:

The proposed revisions:

- (A) Allow an LLC to have one member;

For example, proposal (B) not only permits continuity of life, it assists in sustaining valuation discounts for estate tax purposes. Most other states have made or are making similar changes. (Missouri not permits one-member LLCs.) If Kansas does not, then Kansans may form non-Kansas entities to take advantage of this flexibility.

The RULPA and LLC statutes are being studied in detail for further changes appropriate due to "check the box" regulations and changes by the Uniform Laws Commissioners and leading jurisdictions like Delaware. Any further changes would be proposed for the 1999 session, not 1998.

- (B) Reverse the process for dissolution of the entity upon withdrawal of a member/general partner for either an LLC or LP. Previously upon an event of withdrawal, the entity would dissolve unless a majority in interest of the members/Partners agreed to continue it. The revisions provide that upon an event of withdrawal the entity continues unless a majority in interest of the members/partners agrees to dissolve it. Thus, this provides more continuity of life.

Rationale:

These changes make these entities more flexible and expand their use.

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*STW
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TO: THE SENATE JUDICIARY COMMITTEE
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: JANUARY 29, 1997
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 they work in tandem with, it would be impossible to have a one-person LLC under existing law.

We ask for your support of this bill.

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STJnd
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**COMMENTS IN SUPPORT OF SB 474
BY RICHARD F. HAYSE
ON BEHALF OF THE KANSAS BAR ASSOCIATION**

January 29, 1998

I am Richard F. 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 is to remove, once and for all, the so-called "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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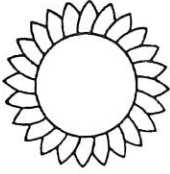
Fee Insurance case that the effort was ineffectual, based upon a reading of other portions of the statutes.

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, 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. And why choose the county of the registered office for the second filing, rather than the corporation's principal place of business, which is where a lay person would expect to find information?

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.



Sara F. Ullmann, Register of Deeds, Johnson County, Kansas

SJUD
1-29
att 5

January 28, 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 be felt in the Secretary of State's office.

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

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