

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

The meeting was called to order by Chairperson Al Lane at 9:03 a.m. on February 11, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. Rick Rehorn - excused
Rep. John Toplikar - excused

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

Conferees appearing before the committee: Melissa Wangeman, Legal Counsel, Secretary of State's Office

Others attending: See attached list

Rep. Grant made a motion to approve the minutes of February 3, 4, and 5 as written. Rep. Ruff seconded the motion. The motion passed.

Handouts passed out to committee were:
Fiscal Notes for HB 2113, 2197 and 2275
List of KWIP Council Members (See Attachment 1)
Graph of total amounts paid for WC claims (See Attachment 2)

Hearing on: HB 2161 - Secretary of state; filing procedures for various business associations.

Melissa Wangeman, Legal Counsel, Secretary of State's Office, appeared to explain **HB 2161**. The bill would make six changes in the Corporate Code. The bill would mean a loss to the State General Fund (SGF) of \$47,140. Included with her testimony is an amendment that was excluded when the bill was drafted. (See Attachment 3)

No others were present to testify for or against the bill and Chairman Lane closed the hearing on **HB 2161**.

Janet Chubb, Assistant Secretary of State, introduced herself from the audience. She was present to listen to Ms. Wangeman's testimony and to learn a little bit more about one of her divisions. Also introduced to the committee was Fariba Pouraryan, Deputy of the Corporation Division of the Secretary of State's Office.

Final Action on: HB 2075 - Definition of employee under the Kansas Tort Claims Act.

Rep. Ruff made a motion to pass out HB 2075 favorably and place it on the Consent Calendar. The motion was seconded by Rep. Gilmore. The motion carried.

Chairman Lane adjourned the meeting at 9:23 a.m.

The next meeting is scheduled for February 12, 1999.

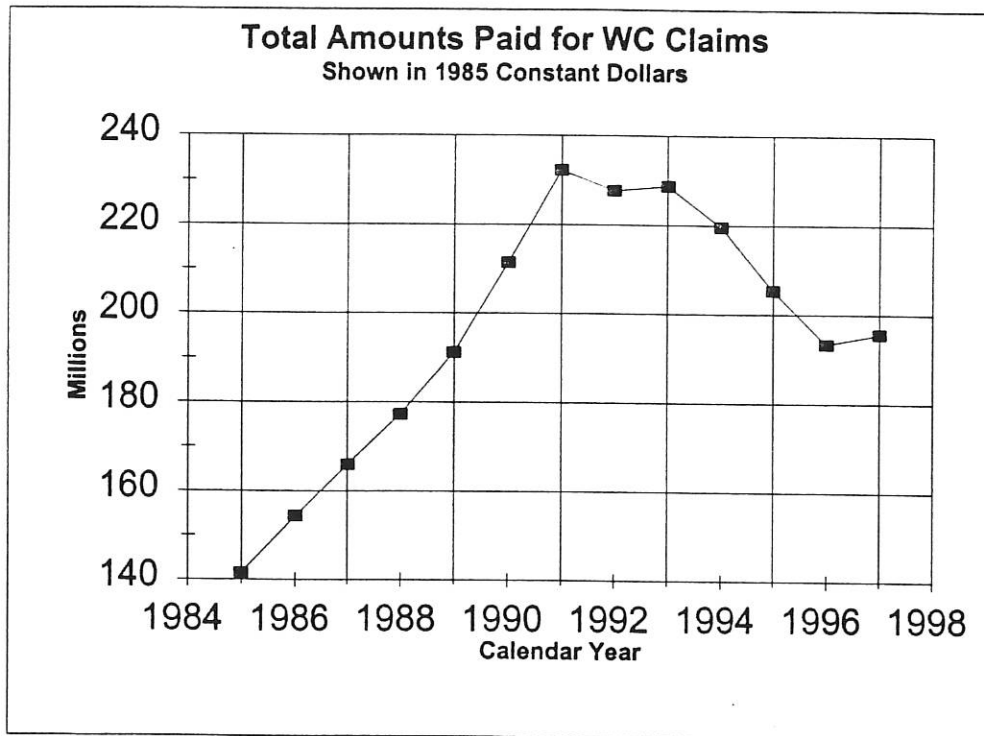
**Kansas Workforce Investment Partnership (KWIP) Council
One-Stop Committee**

<u>Representation</u>	<u>Primary Appointee</u>	<u>Alternate Appointee</u>
Chair	Dave Thomas 913/624-3343 913/624-3490 fax	Laura Meeks 316/223-2700 316/223-4927 fax
Department of Education	Joe Birmingham 785/296-2210 785/296-3525 fax	None
Department of Human Resources	Sec. Wayne Franklin 785/296-7474 785/368-6294 fax	Bill Laves 785/296-5058 785/296-5286 fax
Department of SRS	Candace Shively 785/296-6750 785/296-6960 fax	None
Department of Commerce and Housing	Steve Jack 785/296-5298 785/296-3490 fax	None
KWIP -- Business	Jerry Hiatt 316/332-0000 316/332-0144 fax	Temporarily Vacant
KWIP -- Labor	Bill Moore 785/232-3866 785/232-6096 fax	Dwayne Peaslee 785/843-3151 785/843-3421 fax
KWIP -- Education	Sharon Townsend 913/681-4174 913/685-7664 fax	Wynne Begun 913/681-4172 913/685-7664 fax
Private Industry Council (PIC)	Eddie Estes 316/227-8082 316/227-8090 fax	None
Local Elected Official (LEO)	John Green 316/429-3256	None
Kansas State Senate	Sen. Lana Oleen 785/537-3300	None
Kansas House of Representatives	Rep. Al Lane 913/362-7824	None
<u>Ex-Officio Members</u>		
Governor's Office	Judy Krueger 785/296-4052 785/296-7973 fax	None
Budget Office	Duane Goossen 785/296-2436 785/296-0231 fax	None
Department of Administration	Sec. Dan Stanley 785/296-3011 785/296-2702 fax	None

HOUSE BUSINESS, COMMERCE & LABOR COMM.
2-11-99
Attachment 1

EXHIBIT 3

Year	Total Amounts Paid for Workers' Compensation Losses (in millions)	CPI Index Number	Adjusted Total Amounts Paid for Workers' Compensation Losses (in millions)
1985	\$141.5	107.8	\$141.5
1986	\$157.0	109.6	\$154.4
1987	\$174.9	113.6	\$166.0
1988	\$194.5	118.3	\$177.2
1989	\$220.0	124.0	\$191.3
1990	\$256.4	130.7	\$211.5
1991	\$293.5	136.2	\$232.3
1992	\$296.4	140.3	\$227.7
1993	\$306.6	144.5	\$228.7
1994	\$301.8	148.2	\$219.5
1995	\$290.3	152.4	\$205.3
1996	\$281.5	156.9	\$193.4
1997	\$291.3	160.5	\$195.7



Ron Thornburgh
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STATE OF KANSAS
TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE BUSINESS, COMMERCE, AND LABOR COMMITTEE
FEBRUARY 11, 1999
ON HB 2161

Mister Chairman and Members of the Committee:

I appreciate the opportunity to appear before the committee today in support of HB 2161, a bill introduced by the Secretary of State's office. The bill's purpose is to clean up sections of the corporate code for the benefit of our customers and to promote uniformity and efficiency within the business services division of our office. The bill would accomplish the following amendments:

1. Eliminate the requirement that corporations include the county in the registered office address on corporate filings,
2. Delete the requirement that the Secretary of State return copies of foreign corporation filings to the resident agent,
3. Discontinue issuance of certificates of authority and certificates of withdrawal to foreign corporations and issue certified copies instead,
4. Eliminate the requirement that financial information for business trusts be certified by a CPA and instead allow the trustee to verify the information,
5. Simplify fax filing for business entities by accepting fax filings as originals and not requiring an original document within seven days of the fax filing, and
6. Allow faxed signatures, conformed signatures and electronically transmitted signatures for all business filings.

REGISTERED OFFICE ADDRESS

Corporations are required to maintain a registered office and an agent on record with the Secretary of State for purposes of receiving service of process. The corporate code as written in
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2-11-99
Attachment 3

1972 requires the corporation's registered office to include the county in the address. The reason for this requirement probably relates to an earlier requirement that the corporation's documents be recorded in the county of the registered office. This recording requirement was repealed during the 1998 legislative session by a bill sponsored by the KBA.¹ Because the documents are no longer required to be recorded at the county level, the county name is not necessary to the registered office address. HB 2161 would eliminate the county from the registered office address. The modern business entities--limited liability companies, limited partnerships, limited liability partnerships--do not require the county as part of their addresses, probably because these entities never had the dual filing requirement. Corporate customers frequently forget to include the county as part of their registered office address, resulting in our rejecting the documents and delaying the corporation's filings. Eliminating this requirement will make corporate filings consistent with the laws on other business entities and lessen the likelihood that the documents will be rejected.

FOREIGN CORPORATION FILINGS

The corporate code requires the Secretary of State to return copies of foreign corporation filings (i.e., out-of-state) to the resident agent at the registered office address. The reason for this requirement is again probably related to recordation of corporate documents in the county of the resident agent. Because this recording requirement no longer exists, there is no reason to return copies of the documents to the resident agent. HB 2161 would eliminate this requirement, allowing the Secretary of State to return the documents directly to the filing party. This amendment would make foreign corporation filings consistent with all other filings in the Secretary of State's corporations division and provide better customer service.

¹ The KBA is proposing additional legislation this year to clean up some sections that were missed last year.

HB 2161 would also discontinue the issuance of certificates of authority and certificates of withdrawal to foreign corporations and instead allow the Secretary of State to issue certified copies. Current law requires the Secretary of State to issue a certificate of qualification when the foreign corporation registers with the Secretary of State to do business in Kansas. When the foreign corporation leaves the state, the Secretary of State issues a certificate of withdrawal. These are the only two filings in the corporations division that receive “certificates.” All other filings receive a certified copy in return. Eliminating this requirement would make the foreign corporation filing desk more efficient and would create consistency with all other filings.

BUSINESS TRUSTS

Kansas law requires business trusts to include with their application for registration a balance sheet certified by a certified public accountant. The business trust’s annual report must also include a statement of assets and liabilities certified by a CPA. This requirement is very costly and burdensome on the business trust, as it requires the business trust to hire a CPA just to file with the Secretary of State’s office.

In contrast, the balance sheet required on the foreign corporation application is verified by officers of the corporation. Annual reports that are filed by other business entities are also verified by officers. The business trust laws were enacted in 1961, and the legislative history does not explain the reason for the different standard for business trusts. K.S.A. 17-2035 subjects business trusts to laws applicable to corporations, and case law has noted that business trusts are to be regulated in a manner similar to corporations. However, business trusts are required to hire an outside professional prior to registering with our office, a requirement not found in the corporate code nor in any statutes relating to other business entities. HB 2161 would allow the trustee to verify the financial information instead of a CPA. Allowing the trustee to sign the business trust

application and the annual report would make business trust laws consistent with all other business entities that file with our office, while eliminating a costly burden on our business trust customers.

FAX FILING

Kansas laws allow business entities to file their documents by fax, so long as they send the original documents to the Secretary of State's office within seven working days. Customers often fail to file the original documents as required by law, and their fax filing becomes ineffective. HB 2161 would eliminate the need to follow up with the original documents and would consider the faxed filing the original filing.

This amendment reflects the modern trend among courts and other filing offices that accept faxed filings as originals. The state of Kansas often looks to the practices in the Delaware Secretary of State's office because the Kansas corporate code is modeled on the Delaware corporate code. The Delaware Secretary of State has accepted fax filings as originals since 1988. Kansas courts are now accepting fax filing of pleadings as well. Allowing this method of faxed filing would be consistent with the Revised LLC Act, which is being proposed by the KBA this year (HB 2276). The Revised LLC Act, modeled after the Delaware LLC Act, allows LLCs to fax file documents as originals. HB 2161 would make all other business entity filings consistent with other filing offices and the proposed filing procedures for LLCs.

SIGNATURES

The bill not only would allow faxed signatures but also conformed signatures and electronically transmitted signatures. This provision is again modeled after Delaware law, which authorizes these modern methods of signing documents. The authority to accept electronic signatures would allow the Secretary of State to progress to electronic filing in the future.

Submitted by: Melissa Wangemann, Legal Counsel

AMENDMENT TO HB 2161

ADD:

K.S.A. 17-7301. Foreign corporations; application to do business in Kansas; contents of application; issuance of certificate by secretary of state, conditions.

(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 set forth:

(1) A certificate issued within 90 days of the date of application by the proper officer of the jurisdiction where such corporation is incorporated attesting to the fact that such corporation is a corporation in good standing in such jurisdiction;

(2) the address of the principal office of the corporation is located;

(3) the address of the principal office or place of business in this state is to be located, if known;

(4) the full nature and character of the business the corporation proposes to conduct in this state;

(5) the name and address of each of the officers and trustees or directors of the corporation;

(6) a statement as to when the corporate existence of the corporation will expire in the state of incorporation;

(7) a detailed statement of the assets and liabilities of the corporation, as of a date not earlier than 12 months prior to the filing date;

(8) the location of the registered office of the corporation in this state and the name of its resident agent in charge of the registered office; and

(9) the date on which the corporation commenced, or intends to commence, doing business in this state.

The application shall be subscribed and sworn to by the president or a vice-president and the secretary or an assistant secretary of the corporation, and it shall be accompanied by the written consent of the corporation, irrevocable, that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on the secretary of state as provided for in K.S.A. 17-7307 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 the president and secretary of the corporation. Such consent shall be executed by the president or a vice-president and the secretary or an assistant secretary of the corporation and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the corporation authorizing the secretary or an assistant secretary and the president or a vice-president to execute it. Nothing in this act or the act of which this section is amendatory shall be construed as requiring such consent or the order or resolution of the board of directors to be recorded in the office of the register of deeds.

(c) After receipt of ~~any such~~ *the application and fee*, if the secretary of state finds that it complies with the provisions of this section, the secretary of state shall ~~issue a certificate authorizing the foreign corporation to do business in this state, except that file the original application and certify the duplicate copy in accordance with K.S.A. 17-6003. The certified copy of the application shall be prima facie evidence of the right of the corporation to do business in this state.~~ †The secretary of state shall not ~~issue file such certificate 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 each other corporation organized under the laws of this state or reserved or registered as a foreign corporation under the laws of this state;

(2) the corporation has obtained the written consent of such other corporation, which has the same name, for the corporation to do business in this state under such name and such consent has been executed, acknowledged and filed with the secretary of state in accordance with K.S.A. 17-6003 and amendments thereto; or

(3) the corporation indicates, as a means of identification and in its advertising within this state, the state in which it is incorporated. ~~The certificate of the secretary of state, under the seal of the office of the secretary of state, shall be delivered to the resident agent upon the payment to the secretary of state of the fee prescribed therefor, and the certificate shall be prima facie evidence of the right of the corporation to do business in this state.~~

CORRECT page 15, line 8:

(c) Upon the filing of the certificates by the secretary of state, the appointment of the resident agent of the corporation in this state, upon whom process against the corporation may be served, shall be revoked, and the corporation shall be deemed to have consented that service of process in any action, suit or proceeding based upon any cause of action arising in this state, during the time the corporation was authorized to transact business in this state, may thereafter be made by service upon the secretary of state in the manner prescribed by K.S.A. 60-304, and amendments thereto.