Approved: 3-17-99
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 9, 1999 in Room 313-S of the Capitol.

All members were present except:
Representative Candy Ruff - Excused
Representative Clark Schultz - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Randy Hearrell, Kansas Judicial Council
Jason Oldham, Office of Judicial Administration
Roger Viola, Security Benefit Group
Ed Schaub, Western Resources
Judge Paul Buchanan, 18th Judicial District

Hearings on **HB 2151 & 2154 - affidavits for self-proved wills, execution and attestation**, were opened.

Randy Hearrell, Kansas Judicial Council, appeared before the committee as the sponsor of the proposed bill. He explained that the bill would strike "under the laws of this state" so a person who lives in Kansas but has been admitted to a medical facility in Missouri can make a will and it be notarized by a Kansas notary. (Attachment 1)

Representative Carmody appeared before the committee in support of the bill. He stated that both **HB 2151 & HB 2154** do the same thing.

Written testimony was provided by the Kansas Bar Association. (Attachment 2)

Hearings on **HB 2151 & 2154** were closed.

Hearings on **HB 2150 - confidentiality in dispute resolution**, were opened.

Jason Oldham, Office of Judicial Administration, appeared before the committee as a proponent of the bill. He explained that, if passed, it would change how court mediation is done by: clarifying that parties and the mediator can refuse to disclose and/or prevent a witness from disclosing any communication made during the mediation process; would allow confidentiality to be lifted for investigations into alleged ethical violations by a mediator; and would allow all mediators to have the ability to report threats of physical violence. (Attachment 3)

District Judge Larry Solomon, Thirteenth Judicial District, provided the committee with written testimony.(Attachment 4)

Hearings **HB 2150** were closed.

Hearings on **HB 2174 & 2156 - proxy voting by electronic transmission**, were opened.

Representative David Adkins appeared before the committee as the sponsor of **HB 2174.** He stated that this proposed bill was modeled after the Delaware Corporation Code to allow proxy voting for stockholder meetings by electronic transmission. (Attachment 5)

Roger Viola, Security Benefit Group, appeared before the committee as a proponent of the bill. He commented that Kansas law does not prohibit electronic transmission of voting, it also does not endorse it. This would be a way to keep Kansas current with other states allowing proxy voting by electronic transmission. (Attachment 6)

Ed Schaub, Western Resources, appeared before the committee in support of the bill and explained that if passed it would give shareholders several options that would be convient ways to vote. (Attachment 7)

Hearings on **HB 2174 & 2156** were closed.

Hearings on **HB 2206 - redesigned administrative judges as chief judges of the district court,** were opened.

Judge Paul Buchanan, 18th Judicial District, appeared before the committee in support of the bill. This proposed bill would clear up confusion between an administrative judge who is responsible for the operation of the district court and an administrative law judge who is responsible for hearing cases within the jurisdiction of a specialized agency of either the legislative or executive branch. (Attachment 8)

Hearings on **HB 2206** were closed.

HB 2154 - affidavits for self-proved wills, execution and attestation

Representative Carmody made the motion to report **HB 2154** favorably for passage. Representative Long seconded the motion. The motion carried.

HB 2206 - redesigned administrative judges as chief judges of the district court

Representative Klein made the motion to report **HB 2206** favorably for passage. Representative Carmody seconded the motion. The motion carried.

2156 - proxy voting by electronic transmission

Representative Swenson made the motion to report **HB 2156** favorably for passage. Representative Adkins seconded the motion.

Representative Adkins made the substitute motion to amend lines 32-33 of **HB 2177** to the laundry list on line 30 of **HB 2156.** Representative Long seconded the motion. The motion carried.

Representative Swenson made the motion to report **HB 2156** favorably for passage, as amended. Representative Adkins seconded the motion. The motion carried.

HB 2222 - limited actions forcible detainer of rental premises

Representative Adkins made the motion to report **HB 2222** favorably for passage. Representative Carmody seconded the motion. The motion carried.

HB 2155 - grants of immunity by county or district attorney or the attorney general

Representative Adkins made the motion to report **HB 2155** favorably for passage. Representative Long seconded the motion.

Representative Adkins made the substitute motion to amend line 38 so the courts would have the power to grant immunity on behalf of the state, with prior notice of the prosecuting attorney. Representative Carmody seconded the motion. The motion carried.

Representative Carmody made the motion to report **HB 2155** favorably for passage, as amended. Representative Long seconded the motion. The motion carried.

The committee meeting adjourned at 4:45p.m. The next meeting is scheduled for February 10, 1999.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

NAME	REPRESENTING
ED SCHAUB	WESTERN RESOURCES
Judy M. Harrell	Kansas Judicial Council
Roger Viola	SBG
Trish Heim	SBG
Jason Finson	Intern for Rep. Clay Aurand
H. Wayne Roberts	Self
Shayla Johnston	KTLA

JUDICIAL COUNCIL TESTIMONY
ON HB 2154

In 1975, the Judicial Council recommended to the legislature that Kansas adopt a "self-proved" will statute and K.S.A. 59-606 was amended to so provide.

The amendment provided that a will could be "proved" by a statutory affidavit signed by the witnesses to the will, and acknowledged. The affidavit contains the requirements to admit a will to probate and record, such as stating that the testator possessed the rights of majority and was of sound mind, that the will was made voluntarily and that the testator declared the document to be his or her last will and testament.

The amended statute seemed to work well, but about one year ago we heard of a small problem, which HB 2154 or HB 2151 will solve.

Current law allows self-proved affidavits to be acknowledged by "an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state." The phrase, "under the laws of this state," for practical purposes, means a Kansas Notary Public. The Uniform Law of Notarial Acts found at K.S.A. 53-501 et seq. allows Kansas notaries to notarize only within the state of Kansas.

An example of a situation which shows the need for this bill is as follows: A resident of Kansas is admitted to a health care facility in Missouri and desires to make a will. According to current Kansas law, the self-proved affidavit must be notarized by a Kansas notary, but the Kansas notary cannot notarize in Missouri. The only lawful solution is to bring the person back to Kansas to execute the affidavit. By striking the phrase, "under the laws of this state," the problem is solved.

KANSAS BAR ASSOCIATION

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Topeka, Kansas 66601-1037
Telephone (785) 234-5696
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Email: ksbar@ink.org

Legislative Testimony

TO: **Members, House Judiciary Committee**

FROM: **Nancy Roush, on behalf of the KBA Real Estate, Probate & Trust Section**

SUBJ: **HB 2154**

DATE: **February 9, 1999**

This bill corrects a technical problem. In our mobile society testamentary instruments, especially wills, are not always signed by the decedent in the state where someone resides, especially in places like Kansas City where hospital facilities are on both sides of the state line.

For example, a Kansas resident could be hospitalized in an adjoining state, and need to execute a will. In that situation, a Kansas notary could not notarized the self-proving affidavit because a Kansas notary cannot notarize outside of Kansas. KSA 59-606 provides that only a Kansas notary can notarize the self-proving affidavit for a Kansas resident's will. This problem is solved by deleting the words "under the laws of this state". Thus, as in the example, a notary of the other state could notarize the affidavit of a self-proved will.

KBA supports this legislation. Thank you.

Testimony in Support of HB 2150

Jason Oldham
Office of Judicial Administration
February 9, 1999

Good afternoon committee. My name is Jason Oldham and I am the dispute resolution coordinator with the Office of Judicial Administration. It is my pleasure to address this body on the following legislation.

House Bill 2150, if enacted, would not greatly change how mediation is conducted in Kansas, but would greatly aid Kansas mediators by providing them with a clear law covering confidentiality. I will only discuss pages one and two of the House Bill which modifies K.S.A. 5-512 (dispute resolution act), K.S.A. 23-605 (domestic disputes), and K.S.A. 60-452a (rules of evidence covering mediation).

The first change is found on page one, line 24 and is merely a clarification. It states the parties and the mediator have the privilege themselves to refuse to disclose and/or prevent a witness from disclosing any communication made during the mediation proceeding. Under the current language it gives the appearance the neutral person (the mediator) is a party to the mediation. This confuses the roles of mediator and parties working with the mediator. The same changes are provided on page one, lines 28 and 29.

Next, modifications to section (b)(1), found on lines 32 through 40, change what information remains confidential. This change is necessary so investigations into alleged mediator ethical misconduct can be conducted. This language provides for two things. First, it keeps the ability, available under current law, of a mediator or staff of an approved program to remove the cloak of confidentiality from the mediation to establish a defense in an action filed by a party to the proceeding. Second, the new language allows for confidentiality to be lifted for investigations into alleged ethical violations by a mediator.

The last changes occur on page two, lines 3 and 6 through 8. This new language allows but does not require the mediator to report to the court any threats of physical violence made by a party during mediation. Currently, only mediators conducting domestic dispute mediations, K.S.A. 23-601 *et seq.*, can report these threats. Mediations should be conducted without one party being able to intimidate the other party. To accomplish this we must allow all mediators the ability to report such threats, not just domestic mediators.

Thank you for your attention today and I'll be pleased to answer any questions of the committee.

House Judiciary
2-9-99
Attachment 3

State of Kansas
Thirtieth Judicial District

Larry T. Solomon
District Judge
Courthouse

Box 495
Kingman, Ks. 67068-0495
Phone 316-532-5151

February 9, 1999

To: House Judiciary Committee Members

Re: HB 2150

Dear House Judiciary Committee Members:

Let me introduce myself. My name is Larry T. Solomon and I am the Administrative Judge for the 30th Judicial District, Kingman, Kansas. I am also the Chairman of the Dispute Resolution Advisory Council which advises the Dispute Resolution Coordinator and the Supreme Court of Kansas on matters concerning alternative dispute resolution and which requested this bill be introduced. I was unable to personally testify in support of HB 2150 today because of my heavy caseload and the many trials I have scheduled. This letter explains why I support this important legislation.

First, this bill provides necessary clarification to existing law. Current wording of the mediation confidentiality statutes is awkward and confusing. This bill clarifies that the parties and the mediator have the privilege to refrain from disclosing confidential information and may keep witnesses from doing so.

Second, confidentiality is necessary so parties feel free to fully discuss matters in mediation as they develop an agreement. This protection, however, should not be used to cover unethical behavior by a mediator. This is why the change to 5-512(b)(1) is necessary. Under the new language, confidentiality cannot be used to prevent an investigation into alleged ethical violations. Conversely, a mediator or staff member of an approved mediation program should be able to forego confidentiality to defend themselves against an allegation of unethical behavior. This language strikes a necessary balance.

Lastly, I want to explain why this bill does not change the current K.S.A. 5-512(b)(5) language which allows a Judge to order a mediation to be opened. Mediation is normally a confidential process. This characteristic sets mediation apart from other forms of dispute resolution such as conciliation. There are situations, however, where the court should be able to hear evidence regarding the mediation process. As referenced above, a Judge should be able

to order a mediation opened if unethical behavior is alleged. The Judge should also be able to order a mediation opened if there are claims of duress or over-reaching by one of the parties during the mediation process. Another very important instance where a Judge should be able to open the mediation process involves a scenario where the parties reach an agreement during the mediation process. In the majority of cases, an agreement reached during the mediation process is reduced to some form of writing and then presented to the parties' lawyers for technical "clean-up". On occasion, I have had parties attempt to back out of a mediated agreement. If, in fact, the parties reached an agreement during the mediation process, it is my opinion that, absent duress, over-reaching, etc., the agreement is as enforceable as any other agreement might be. Information concerning the bargaining process and the fact of the agreement during the mediation process should be open to Court review.

In closing, I would advise you that I have never had to open a mediation. I have talked to numerous Judges across the state about this issue and I am not aware of any instance where a Judge has breached the mediation process, although that power exists. I would suggest that it is a power that is used rarely and infrequently by Judges. I further suggest that the power is not being abused. Please leave our discretion in this regard in tact.

Thank you for your consideration of this matter.

Very truly yours,

Larry T. Solomon, Chairman
Dispute Resolution Advisory Board

LTS:mh

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KANSAS 66612
(785) 296-7678

8021 BELINDER ROAD
LEAWOOD, KANSAS 66206
(913) 341-1232

REPRESENTATIVE DAVID ADKINS

Testimony Before the House Judiciary Committee
in favor of HB 2174/2176

Mr. Chairman, members of the Judiciary Committee:

It is my pleasure to appear before you as a proponent of HB 2174 and HB 2176 which are designed to move Kansas corporate law into conformity with the Delaware Corporation Code to permit proxy voting for stockholder meetings by electronic transmission.

I proposed my bill to allow Kansas Corporations to permit proxy voting via the telephone and the Internet. The bill amends K.S.A. 17-6502 to be consistent with the corresponding Delaware Corporation Code Section 212. Effective July 1, 1990, Delaware added paragraphs (c) and (d) to Section 212 of their Code. In addition to Delaware, nine other states have passed similar statutes to permit electronic voting. These nine are California, Colorado, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Utah and Virginia.

I appreciate your attention to this matter and urge your favorable consideration of this legislation.

Respectfully submitted,
David Adkins

House Judiciary
2-9-99
Attachment 5

Citation
DE ST TI 8 s 212
8 Del.C. § 212

Search Result

Rank 1 of 2

Database
DE-ST-ANN

TEXT

DELAWARE CODE ANNOTATED
TITLE 8. CORPORATIONS
CHAPTER 1. GENERAL CORPORATION LAW
SUBCHAPTER VII. MEETINGS, ELECTIONS, VOTING AND NOTICE

Current through End of 1996 Reg. Sess.

§ 212 Voting rights of stockholders; proxies; limitations.

(a) Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder. If the certificate of incorporation provides for more or less than 1 vote for any share, on any matter, every reference in this chapter to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for him as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the stockholder or his authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(2) A stockholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

DE ST TI 8 s 212

TEXT

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(e) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

CREDIT

(8 Del. C. 1953, § 212; 56 Del. Laws, c. 50; 57 Del. Laws, c. 148, § 12; 67 Del. Laws, c. 376, § 6.)

NOTES, REFERENCES, AND ANNOTATIONS

NOTES, REFERENCES, AND ANNOTATIONS

Cross-references. -- As to voting rights of stockholders of cooperative agriculture associations, see § 8534 of Title 3. As to voting rights of stockholders of state banks and trust companies, see § 744 of Title 5.

Revisor's note. -- Section 30 of 67 Del. Laws, c. 376, provides: "This act shall become effective on July 1, 1990." Chapter 376 was signed by the Governor on July 17, 1990.

Effect of amendments. -- 67 Del. Laws, c. 376, inserted present (c) and (d) and redesignated former (c) as (e).

One vote for 1 share general not special right. -- The provision that each stockholder shall, at every meeting of stockholders, be entitled to 1 vote for each share of the capital stock held by him is declaratory of a general, not a special right. Hartford Accident & Indem. Co. v. W.S. Dickey Clay Mfg. Co., Del. Supr., 24 A.2d 315 (1942).

Who may vote at stockholders' meeting is to be determined by Delaware Constitution and statutes as same are construed by its courts. Bouree v. Trust Francais, Del. Ch., 127 A. 56 (1924).

Charter restrictions on voting. -- In the absence of any express provision in subsection (a) of § 151 of this title, or elsewhere in the law, prohibiting charter restrictions on voting, the provisions of subsection (a) of this section control in determining the validity of those restrictions. Providence & Worcester Co. v. Baker, Del. Supr., 378 A.2d 121 (1977).

The absence in subsection (a) of this section of a cross reference to subsection (a) of § 151 of this title is indicative of the absence of any

DE LEGIS 339 (1998)
1998 Delaware Laws Ch. 339 (S.B. 311)

DELAWARE 1998 SESSION LAWS
SECOND REGULAR SESSION OF THE 139TH GENERAL ASSEMBLY

Additions and deletions are not identified in this document.

Ch. 339
S.B. No. 311
CORPORATIONS--GENERAL AMENDMENTS

Ch. 339

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

****

<< DE ST TI 8 s 212 >>

Section 28. Amend Section 212(b), Title 8, Delaware Code, by deleting the word "him" and substituting in lieu thereof the words "such stockholder".

Ch. 339, s 29

<< DE ST TI 8 s 212 >>

Section 29. Amend Section 212(c), Title 8, Delaware Code, by deleting the word "him" and substituting in lieu thereof the words "such stockholder".

Ch. 339, s 30

<< DE ST TI 8 s 212 >>

Section 30. Amend Section 212(c)(1), Title 8, Delaware Code, by deleting the word "him" and substituting in lieu thereof the words "such stockholder" by deleting the word "his" and substituting in lieu thereof the words "such stockholder's", and by deleting the words "his or her" and substituting in lieu thereof the words "such person's".

Ch. 339, s 31

<< DE ST TI 8 s 212 >>

Section 31. Amend Section 212(c)(2), Title 8, Delaware Code, by deleting the word "him" and substituting in lieu thereof the words "such stockholder".

KANSAS STATUTES ANNOTATED
CHAPTER 17. CORPORATIONS
1972 GENERAL CORPORATION CODE--ARTICLES 60 TO 74
ARTICLE 65. MEETINGS, ELECTIONS, VOTING AND NOTICES

Current through End of 1996 Reg. Sess.

17-6502. Voting rights of stockholders; proxies, limitations.

(a) Unless otherwise provided in the articles of incorporation and subject to the provisions of K.S.A. 17-6503, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. If the articles of incorporation provide for more or less than one (1) vote for any share on any matter, every reference in this act to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

History: L. 1972, ch. 52, § 55; July 1.

<General Materials (GM) - References, Annotations, or Tables>

SOURCE OR PRIOR LAW:

1995 Main Volume Source or prior law:

17-3301; 8 Del. C. § 212.

REVISOR'S NOTE:

1995 Main Volume Revisor's Note:

Section inapplicable to corporations not authorized to issue stock, see 17- 6505.

CROSS REFERENCES TO RELATED SECTIONS:

1995 Main Volume Cross References to Related Sections:

Voting provisions authorized for inclusion in articles of incorporation, see 17-6002 (b) (4).

Voting rights of holders of fractional shares, see 17-6405.

Treasury shares, voting power denied, see 17-6410.

Cumulative voting for directors, see 17-6504.

The Securit[illegible]nefit
Group of C[illegible]anies

Security Benefit Life Insurance Company
Security Benefit Group, Inc.
Security Distributors, Inc.
Security Management Company, LLC

700 SW Harrison St.,
Topeka, Kansas 66636-0001
(785) 431-3000

Date: February 9, 1999

To: Members of the House Judiciary Committee

From: Roger K. Viola
Senior Vice President,
General Counsel and Secretary
Security Benefit Group of Companies

Subj: House Bill 2156

House Bill 2156 specifically authorizes the use of electronic voting procedures in corporate elections and is sponsored by the affiliated companies of Security Benefit Life Insurance Company. Security Benefit is of the opinion that this will bring our State's stockholder voting statute, K.S.A. 17-6502, into the electronic age.

Security Benefit is a diversified financial services organization which with its subsidiaries manages assets in excess of $8 billion dollars for its customers in all 50 states. It is domiciled in Topeka and employs approximately 550 Kansans.

Security Benefit's primary products are publicly traded mutual funds and variable annuities. Variable annuities are security/insurance products that are funded with underlying mutual funds dedicated solely to the owners of the variable annuity contracts. Security Benefit, through its subsidiary Security Management Company, LLC ("SMC"), currently manages six publicly traded mutual funds that offer twenty series of stock. It also manages the SBL Fund which is dedicated to the owners of SBL's variable annuity contracts. The publicly traded funds and the SBL Fund each have over 100,000 shareholders in the aggregate. Each fund conducts annual meetings and from time to time conducts special meetings of shareholders. As a result of our geographically diverse shareholder base, it is necessary for our Company to rely on proxy voting at the numerous meetings we hold each year.

Like the rest of our lives, corporate voting has been taken over by electronic commerce. Many corporations throughout the country have resorted to telephonic and Internet voting during their corporate elections. A copy of a

recent article from the Topeka Capital Journal on this subject is attached. The article emphasizes the prevalence of electronic voting throughout the country.

Twenty-two states have now adopted statutes similar to the one proposed by H.B. 2156 and the trend is accelerating. While an argument could be made that the current Kansas law does not prohibit electronic voting, it certainly does not expressly permit it either. H.B. 2156 is an effort to specifically authorize the type of voting which has now become customary for many corporations

H.B. 2156 is patterned after the Delaware statute. It expressly permits stockholders to authorize the appointment of a proxy by telephone or via the Internet. The proposal also recognizes photocopies and facsimile transmissions of the proxy appointment. Electronic voting can be more convenient for stockholders, and thus facilitate a corporation's efforts to establish a quorum for the conduct of business at stockholder meetings. Electronic voting should also result in a cost savings for corporations which would otherwise pay the postage on returned proxy cards.

Paragraph (b)(3) provides that a stockholder may appoint a proxy "by transmitting, or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission, including telephonic transmission . . . . provided that any such electronic transmission must either contain or be accompanied by information from which it can be determined that the stockholder authorized the transmission." Companies that permit telephonic or electronic voting typically assign control numbers to stockholders in order to verify the stockholder's identity. Stockholders receive the control numbers with their proxy cards and are prompted to enter the control numbers when they vote. Companies use the last vote received in the case of stockholders who vote more than once, and, as is the case when mail-in proxy cards are used, a stockholder is always free to attend the stockholder meeting and change his or her vote.

Security Benefit believes that H.B. 2156 will allow Kansas to keep pace with the rest of the country when it comes to shareholder proxy voting and encourages you to vote favorably on this bill.

Electronic proxy voting catching on with investors

By **DOUGLAS ARMSTRONG**
Milwaukee Journal Sentinel

At Ameritech's annual meeting, a portion of the 1 million share owners participated through cyberspace — right down to voting their shares via the Internet.

"It offers more convenience for our share owners," said Ameritech spokesman Jerrell Ross. "Many are already using the Internet to keep track of their investments."

Not only tracking. Investors also have been buying and selling stocks on line, before they could vote their shares the same way.

"A lot of companies have their annual reports and proxy statements on the Web, said Ross. "We were the first to offer all three — report, proxy statement and ballot to vote."

Electronic proxy voting is suddenly catching on big time. Major firms around the country, including Coca Cola, Ford, IBM and Intel, are offering Internet ballots to shareholders for the first time this year.

"It's a pretty hot topic," says Eugene Lee, of Firstar Corporate Trust, who supervises and tallies proxy votes at dozens of Wisconsin annual meetings each year.

First Chicago Trust Co. is the agent handling Internet proxy voting for 25 companies, according to Tom Newton, vice president and Internet coordinator at First Chicago.

> "If you get 10,000 to 20,000 to sign up to not get that paper anymore, you're obviously talking about some pretty big savings.
>
> – Tom Newton, vice president and Internet coordinator at First Chicago

They handle shareholders whose stock certificates are registered in their own names, rather than held in a "street name" in an account with a broker.

Internet proxy voting has the potential to greatly reduce expensive paper handling. "The cost savings can be compelling," Newton said.

If a company couples Internet voting with a plan to reduce the number of paper sets of material they send out to shareholders, they can save up to $5 in postage and printing per shareholder, according to Newton.

"If you get 10,000 to 20,000 to sign up to not get that paper anymore," says Newton, "you're obviously talking about some pretty big savings."

Voting shares over the Internet involves the use of a control number, which identifies the shareholder, and a PIN number that acts as the password. You go to a Web site to vote.

Is anyone worried about potential tampering with proxy voting?

"It's the best security available on the Internet right now," says Newton of First Chicago's precautions. "An impersonator would have to have your proxy card and your Social Security number, the same with a paper ballot.

"We go to great lengths to assure the server is secure. A lot of big companies have sent their Web masters to come and check on us. The process is as bulletproof as possible."

A specific check number is built into each control number, and Social Security numbers are checked for match.

"Your vote doesn't hit the file and count instantly," says Newton. "The votes are held in a staging server overnight and the data is scrubbed, looking a check numbers and Social Security numbers."

Companies are turning to Internet proxy voting to save money and shape image.

"It gives you a progressive image," says Newton. "It has environmental overtones. It just makes sense. This is a simple, low-cost way for corporations to communicate with their shareholders."

Testimony
before the
HOUSE JUDICIARY COMMITTEE
by
Ed Schaub, Western Resources
February 9, 1999

Chairman O'Neal and members of the Committee:

Western Resources supports HB 2156 and HB 2174. Implementation of electronic shareholder voting, as allowed by either of these bills, would be beneficial to our shareholders and to shareholders of other publicly traded companies. Electronic voting means allowing shareholders to vote their proxy either by telephone or through the Internet. Both bills are very similar to the Delaware law on electronic voting. This bill would bring Kansas into line with a significant and growing number of states. Over 20 states allow electronic voting.

Shareholders benefit by being able to register their vote at their convenience and eliminate reliance on the postal service to deliver their vote in a timely manner. The option for a shareholder to vote much closer to a meeting date, with assurance the vote will be received prior to the meeting time, may encourage shareholders to vote in instances where they would not have otherwise voted because of mail delivery times.

Companies benefit by reducing their processing costs. Initially the savings is from postage and tabulating the votes, but additional future savings would be through the electronic delivery of proxy materials. Telephone voting generally costs 47 percent less per item compared to business reply postage. Voting via the Internet generally costs 85 percent less per item when compared to business reply postage.

A company's savings will depend on the level of shareholder participation, but the average participation is 15 percent of registered shareholders. The participation rate among registered shareholders is growing as more companies offer the option, and as shareholders become more comfortable with the technology. In a typical proxy vote, Western Resources has about 55,000 shareholders eligible to vote. As shareholders become accustomed to electronic voting and to receiving proxy information electronically, savings will grow.

Shareholders who own shares through a brokerage account may vote today either by phone or the Internet, because these owners are not directly voting the proxy, but rather are providing instructions to their brokerage firm which will complete and submit the proxy. HB 2156 or HB 2174 would allow Kansas companies to catch up with conventional practice.

TESTIMONY IN PPORT OF SB 2206 --JUDGE PAU CHANAN

I want to thank the judiciary committee for the opportunity to appear in support of H. B. 2206 which provides that the administrative judges of the district court will in the future be known as chief judges.

Presently the judge of the district court who is appointed by the Supreme Court to the responsibility for the handling of the administrative matters of the district court is known as the administrative judge. To my knowledge this term has no known history to call the chief judge the administrative judge. In addition to handling the administrative matters, the judge so appointed also has the responsibility to see that all matters are handled expeditiously. The term came into the Kansas judiciary with unification of the courts in 1977.

Traditionally, the term "chief" is used as a title for the first ranking judge or justice of a court. We have the Chief Justice of the United States, the Chief Justice of the Kansas Supreme Court, the Chief Judge of the Kansas Court of Appeals. In the Federal system, we have the Chief Judge of the Court of Appeals for the Tenth Circuit and the Chief Judge of the United States District Court for the District of Kansas.

The basic duties of the administrative judge are set out in K.S.A. 20-329, but each one of the 71 sections of H. B. 2206 set out additional duty or duties for the administrative judge.

The confusion arises when we have an administrative judge who is responsible for the operation of the district court which handles criminal cases including those providing for the death penalty, other felonies and misdemeanors, contracts, suits for damages, divorces, probate of estates, juvenile offenders, children in need of care, child custody, parentage, and all the other myriad of cases, compared to an administrative law judge who is responsible for hearing a case within the jurisdiction of a specialized agency of either the legislative or executive branch of our state government. You have been dealing with the problems of administrative law judges in House Bill 2126. There you are being asked to create a separate office for administrative law judges.

A good example of the confusion is illustrated by the legislative new letter of the Kansas Bar Association *Oyez Oyez*. The issue is dated February 5, 1999. On page 3 there is an article titled "Administrative judges." The story

is not about district judges. It's about administrative law judges. The reason for the change is to prevent confusion.

We are judges of the judicial branch of government

We are not a part of administrative agencies within either the legislative branch or the executive branch of government.

When I visit with other people within the state and with lawyers and judges outside the state, I must explain that I am the "chief" judge of a trial court and not an administrative law judge. I am responsible for the operation of a district court with twenty-five judges and a total of 217.5 employees including 54 probation officers, court reporters and other types of employees.

I was in St. Paul Minnesota, last spring for a gathering, a lawyer there had been told I was an administrative judge. I had to explain that I was not an administrative law judge in a state agency but the administrative head of the largest court in the state.

I believe that this amendment will give recognition to those judges who are responsible for the operation of the 31 judicial districts in the state who perform these functions with only a modicum of additional compensation.

I urge the approval of H.B. 2206.