

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on January 26, 2004 in Room 313-S of the Capitol.

All members were present except:

- Representative Jeff Jack- excused
- Representative Ward Loyd- excused
- Representative Dan Williams- excused

Committee staff present:

- Jill Wolters, Revisor of Statutes
- Diana Lee, Revisor of Statutes
- Jerry Ann Donaldson, Kansas Legislative Research Department
- Cindy O'Neal, Secretary

Conferees appearing before the committee:

- Bob Alderson, Kansas Bar Association
- Rich Hayse, Kansas Bar Association
- Melissa Wangemann, Office of Secretary of State
- Marlee Carpenter, Kansas Chamber of Commerce
- Natalie Haag, Security Benefit

The hearing on SB 29 - Corporation Code Amendments, was opened.

Bob Alderson, Kansas Bar Association, informed the members that the proposed bill was the result of a comprehensive review by the Kansas Bar Association of the Kansas Corporation Code. Kansas has patterned it's general corporation laws after Delaware since 1939. The committee agreed to continue to follow the Delaware Corporation Code due to the fact that the Kansas Supreme Court looks at it as being persuasive. However, not all the provisions in the Delaware Corporation Code are included in the proposed legislation. (Attachment 1)

Bob Alderson & Rich Hayse, Kansas Bar Association, explained the bill to the committee.

Melissa Wangemann, Office of Secretary of State, appeared as a proponent to the bill. She addressed several sections which would apply to the Secretary of State's Office:

1. Filing will be done electronically with a hard copy being sent back to the customer
2. Clarifying the definition of "doing business" as a foreign corporation in Kansas.
3. Allows the acceptance of certificates of good standing from a reliable third party vendor approved by their office.

She suggested two amendments. The first related to annual reports required by only the county where the land is located and the second would include reporting of parent/subsidiary relationships on the annual report at the costs of \$10,000 to \$15,000. (Attachment 2) She also provided the committee with a list of technical amendments (Attachment 3)

Marlee Carpenter, Kansas Chamber of Commerce, supported the bill because it would benefit business in Kansas. (Attachment 4)

Natalie Haag, Security Benefit, requested an amendment to K.S.A. 40-306 which requires the President or Vice-president, together with the Corporate Secretary to sign every contract for the company. They feel that this it is cumbersome to comply with and therefore suggest it be stricken. (Attachment 5)

Hearings on SB 29 were closed.

Representative O'Neal received a bill request which would allow Johnson County to supplement a district magistrate judges salary. Representative Swenson made the motion to have the request introduced as a committee bill. Representative Patterson seconded the motion. The motion carried.

The committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for January 27, 2004.

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**TESTIMONY OF BOB ALDERSON BEFORE THE  
HOUSE COMMITTEE ON JUDICIARY ON  
BEHALF OF THE KANSAS BAR ASSOCIATION  
January 26, 2004**

Chairman O'Neal and Members of the Committee:

I am Bob Alderson, a lawyer in private practice in Topeka, and I am appearing today on behalf of the Kansas Bar Association ("KBA"), to explain the changes in the Kansas General Corporation Code ("Kansas Code") being proposed by the KBA, as such changes are contained in 2003 Senate Bill No. 29 ("SB 29"). Sharing these duties will be Richard F. Hayse, also a lawyer in private practice in Topeka with the firm of Morris, Laing, Evans, Brock & Kennedy.

The KBA's proposal being considered today grew out of a study conducted by an ad hoc KBA committee ("Study Committee") which was appointed to make a comprehensive review of the Kansas Code and related statutes. I "volunteered" to chair the Study Committee, and in addition to Mr. Hayse, the other lawyers selected to serve on the Study Committee were:

Barton P. Cohen  
Blackwell Sanders Peper Martin, LLP  
Overland Park

William N. Fleming  
Barber, Emerson, Springer, Zinn & Murray, L.C.  
Lawrence

Prof. Edwin W. (Webb) Hecker  
University of Kansas School of Law  
Lawrence

Charles N. Henson  
Wright, Henson, Clark & Baker, L.L.P.  
Topeka

Dixie F. Madden  
Adams & Jones, Chtd.  
Wichita

William E. Quick  
Polsinelli, Shalton & Welte  
Kansas City, Missouri

Clayton C. Skaggs  
Weary Davis, L.C.  
Manhattan

Mark W. Stafford  
General Counsel, Kansas Board of Healing Arts  
Topeka

Melissa Wangemann  
Attorney for Kansas Secretary of State  
Topeka

William R. Wood  
Foulston & Siefkin  
Wichita

If it is not readily apparent from reviewing the above list of names, I can assure you that the persons serving with me on the Study Committee made this a "blue ribbon" committee.

The impetus for convening the Study Committee was provided by recommendations for specific changes in the Kansas Code made to the KBA by the Kansas Secretary of State, as well as an observation by that office that a number of years had elapsed since the Kansas Legislature had considered comprehensive amendments to the Kansas Code, in recognition of changes made in the Delaware corporation statutes ("Delaware Code"). As you may be aware, Kansas has patterned its corporation laws after the comparable provisions of the Delaware Code since 1939, and periodically the Legislature has amended the Kansas Code to incorporate Delaware amendments, including a total re-enactment of the Code in 1972.

Notwithstanding, at its initial meeting in May of 2001, the Study Committee considered some possible alternatives to a General Corporation Code premised on conformity with the Delaware Code, such as the Model Business Corporation Act which has been enacted in whole or in part in a number of states. However, after careful deliberation, the Study Committee unanimously determined that it was in the best interests of those who use and are subject to the Kansas Code to continue patterning it after the Delaware Code. That decision was prompted, in part, by the state's extensive history of substantial conformity with the Delaware Code, as

noted above. Practitioners have developed a familiarity with the language, style and format of the Kansas Code, as well as an understanding of its substantive provisions. Equally as important, though, the Study Committee wanted to preserve the relevance of Delaware case law construing provisions of the Delaware Code. The Kansas Supreme Court has declared these Delaware decisions to be "persuasive" in construing corresponding provisions of the Kansas Code. The use of Delaware judicial decisions in construing Kansas Code provisions can be particularly important where a section of the Kansas Code has little or no Kansas case law construing its provisions.

Once that decision was made, the Study Committee began the work of comparing the current Kansas and Delaware Codes, to determine the Delaware provisions not included in the Kansas Code. Here, I want to accord particular recognition to Clayton Skaggs, who provided each committee member with an electronic, side by side comparison of the two state codes, identifying the substantive differences between them. This was essential to the Study Committee's task of recommending to the KBA Legislative Committee changes which should be made in the Kansas Code.

It is noteworthy that the Study Committee carefully considered each of the changes it proposed to the KBA Legislative Committee. In fact, in some instances there was extensive deliberation regarding the propriety of including a particular Delaware Code provision in the Kansas Code. While most of the changes that have occurred in the Delaware Code, subsequent to the last comprehensive amendment of the Kansas Code to seek conformity between the two codes, are included in the bill, not all of the Delaware provisions were recommended for inclusion in the Kansas Code. In addition, there are a few instances where the Study Committee recommended changing the Kansas Code in a way that is not comparable to the corresponding Delaware law.

Once the Study Committee completed its comparative review, its recommendations were submitted to the KBA Legislative Committee in the fall of 2001. With one exception, the KBA Legislative Committee adopted the recommendations of the Study Committee. (Richard Hayse will identify that one exception in his presentation.) The KBA Board of Governors subsequently adopted that Committee's recommendation.

Because of the comprehensive nature of the proposal, preparing the proposal in bill form required considerable time and effort. Although the draft was completed in time for introduction in the 2002 legislative session, there was not sufficient time in that session for this bill to be heard. Accordingly, the bill was re-drafted and introduced by the

Senate Committee on Judiciary in the 2003 session (SB 29). SB 29 includes additional changes made in the Delaware Code in 2002. The KBA Legislative Committee approved the Study Committee's recommendation that these additional changes be included in the Kansas Code, which approval was endorsed by the KBA Board of Governors.

I would note that, subsequent to last session, the Study Committee reconvened to consider further changes made to the Delaware Code in 2003. The Study Committee determined that substantially all of these changes should be included in the Kansas Code. The KBA Legislative Committee approved the Study Committee's determination, and I am requesting that SB 29 be amended to include these recent amendments to the Delaware Code. I have attached a "balloon" of the affected sections of the bill showing these proposed changes.

The draft incorporating the KBA's recommended changes in the Kansas Code is extremely voluminous and time does not permit a section by section analysis of the changes. Nor is such analysis warranted, as many of the changes being recommended are technical, wording changes, and many of them simply effect consistent usage of terms throughout the Kansas Code. Other amendments are somewhat minor in nature and the effect of such changes should be readily apparent.

With that in mind, the effort today will be to identify several of the more substantive, noteworthy changes included in the bill. I will discuss a few of those more notable amendments, and Mr. Hayse will follow with a discussion of several others. Following these presentations, Mr. Hayse and I will endeavor to answer any questions which members of the Committee may have regarding the Kansas Code amendments, including those shown on the attached balloon amendments.

Thank you for your attention to this presentation. On behalf of the KBA, I would urge the Committee to recommend the bill favorable for passage.

RON THORNBURGH  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE HOUSE JUDICIARY COMMITTEE  
ON SB 29

JANUARY 26, 2004

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear in support of SB 29, the Kansas Bar Association's bill revising the Kansas corporate code. The Secretary of State participated as a member of the KBA drafting committee, and most of the sections of the bill affecting our office were drafted by us. Therefore my testimony will focus on those sections relating to the Secretary of State's Office and will not address substantive law issues.

1. **Filing Procedures.** The Secretary of State adopted an imaging system in 2000, which replaced our paper filing system. All documents are indexed and maintained on the imaging system and therefore retention of paper documents is no longer necessary. The proposed bill directs the Secretary of State to image the paper document filed by the customer and to return it to the customer as a certified copy. This new procedure reduces our storage needs while providing the customer evidence of the document that was recorded in our office. Our office has checked with the Historical Society and they are satisfied that the Secretary of State's imaging system will adequately preserve our records.

2. **Definition of "doing business" for Foreign Corporations.** The corporate code defines when an out-of-state corporation is "doing business" in our state, which determines if the corporation must register with the Secretary of State. The current definition is vague and confusing, generating many phone calls from customers to the Secretary of State's Office for help interpreting the provision. The proposed definition given in the bill is based on Delaware law and the Kansas Revised Uniform Partnership Act. It is much more specific and easier to understand.

3. **Third-Party Agent for Certificates of Good Standing.** Foreign corporations that register with the Secretary of State must produce a certificate of good standing from the state of organization. This information is generally obtained from the foreign entity's filing office, such as the Secretary of State. However, no state filing office is able to transmit an electronic version of the certificate. This amendment allows our office to accept certificates of good standing from a reliable third-party vendor approved by our office, who can provide the information in electronic format.

House Judiciary Committee  
1-26-04  
Attachment 2

4. **Annual Reports.** The statutes governing annual reports filed by corporations have been amended to reflect Delaware law, resulting in different reporting requirements. The reporting of agricultural land was limited to disclosure of the county where the land is located instead of listing the township, section and range because customers frequently fail to complete this detailed information, or list inaccurate information. This amendment was discussed with Raney Gilliland of Legislative Research before its inclusion in the bill and he was satisfied that the changes would not impede the public's ability to monitor agricultural entities. However, a senate floor amendment returned this section to its original language to include the reporting of township, range and section. Because the information is incomplete or often unreliable, our office would prefer that we eliminate any information beyond the reporting of the county where the land is located. Listing the county provides the public enough information to access more detailed information at the county Register of Deeds or Appraiser's office, which both contain the correct legal description.

5. **Parent/Subsidiary Franchise Tax Calculation.** The original draft allowed a parent corporation that owned net worth in a subsidiary to subtract any net worth reported by the subsidiary entity before computing its franchise tax, thereby eliminating double taxation. This section was deleted by the Senate Taxation Committee because it resulted in a loss of state general fund money. The Division of Budget estimated that this provision would result in a loss of \$6 million annually.

The Senate Taxation Committee amended the bill to include reporting of parent/subsidiary relationships on the annual report. The purpose of this additional information is to track these relationships in the state of Kansas so that the legislative branch will know how many parent/subsidiaries exist in our state. The Senate Tax Committee thought this information would be helpful in reviewing taxing policies of parent and subsidiary entities. The amendment will have a fiscal impact on the Secretary of State's Office because we will be required to program our computers to track this information. We plan to submit an amended fiscal note as soon as possible, but we expect the costs to run \$10,000 to \$15,000.

I appreciate the opportunity to appear today on the revised corporate code and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

## TECHNICAL AMENDMENTS TO SB 29

1. Page 12, lines 15-20. Amend to reflect new date, July 1, 2004.
2. Page 45, lines 42. Amend "contents" to "consents."
3. Page 77, line 37. Amend "certificate" of incorporation to "articles" of incorporation. (Delaware uses the term "certificate," however, Kansas uses the term "articles.")
4. Page 92, line 37. Add the words "In the alternative. . ." before "any foreign corporation may amend its original application for authority. . ."
5. Page 94, line 41. Delete word "copy."
6. Page 95, lines 9 through page 96, line 5. Restore section 81, except for italicized language in lines 28-29 and 4-5, which should be stricken.
7. Page 100, line 41. Delete word "signed."

Suggested by: Melissa Wangemann  
Office of the Secretary of State  
January 26, 2004



# LEGISLATIVE TESTIMONY

## SB 29

January 26, 2004

By Marlee Carpenter, Vice President of Government Affairs  
Kansas Chamber of Commerce and Industry

Mr. Chairman and members of the committee;

I am Marlee Carpenter here today in support of SB 29. The Kansas Chamber supports the revisions to the Kansas Corporate Code. These changes would amend the General Kansas Corporate Code to bring it into substantial compliance with the General Corporate Code of Delaware, the laws upon which the Kansas Corporate Code has been based on since 1939. These changes are especially important to companies that are currently headquartered in Kansas or might consider Kansas as their home in the future.

SB 29 moves Kansas into the electronic age. The bill allows the use of electronic communication, electronic signature and documents to be tendered electronically. In addition, we support the new amendments offered that further conform Kansas' law to that of Delaware.

The Kansas Chamber Board of Directors at their December Board meeting adopted a policy to support SB 29. Our members believe that businesses that are headquartered in Kansas or looking at locating in Kansas consider the legal climate as a factor that they consider. SB 29 would benefit all companies that do business in Kansas. We urge your support and passage of SB 29. Thank you for your time and I will be happy to answer any questions.

### **About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

The Kansas Chamber is comprised of nearly 7,500 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. The Kansas Chamber receives no government funding.

**House Judiciary Committee  
Senate Bill 29  
Testimony of Natalie G. Haag  
Security Benefit Life Insurance Company  
January 26, 2004**

Chairman O'Neal and Members of the Committee:

Thank you for the opportunity to propose an amendment to Senate Bill 29. I appear today on behalf of the Security Benefit Life Insurance Company. Security Benefit has been operating in Topeka since 1892 when it was founded as a local fraternal society, christened the Knights and Ladies of Security. Today, Security Benefit primarily engages in the financial services business, offering annuities and mutual funds in all fifty states.

In an effort to insure that the Security Benefit Group of Companies was operating in accordance with the best practices for companies engaged in our line of business, the Board of Directors recently undertook a complete review of our governance practices. The General Counsel was active in this effort. During the process, our General Counsel noted the outdated statutes governing who must sign a contract on behalf of an Insurance Company as set forth in K.S.A. 40-306.

We are not seeking to amend the existing language of Senate Bill 29. Instead, we are asking you to consider adding a modification to another corporate business transaction section by amending the provisions of K.S.A. 40-306 as set forth in the attached document. This provision was originally adopted in 1927 and amended in 1973. As the attorneys on the Committee can tell you, a contract is legally binding if it is signed by a person in the company with the actual and/or apparent authority to do so. The current statutory provision requires that the President or Vice-President, together with the Corporate Secretary sign every contract for the Company. This is an outdated provision that makes doing business cumbersome.

It is our proposal that the language of the statute be amended by striking the contract signature requirements. Insurance Companies are bound by the same legal contracts as other companies and Kansas statutes should reflect that current legal standard. We presented our proposal to the Kansas Insurance Department to insure that there was not a continuing need for this provision. The Department did not advise us of any need for this provision and they did not express any opposition to the proposed amendment.

Thank you for the opportunity to make this proposal.

K.S.A. § **40-306**

KANSAS STATUTES ANNOTATED

CHAPTER 40.--INSURANCE

ARTICLE 3.--ORGANIZATION, MERGER OR CONSOLIDATION OF STOCK COMPANIES

**40-306. Officers and agents; signatures to contracts; exception.**

The board of directors shall elect from their number a president and vice- president, and shall appoint a secretary, treasurer and such other officers as shall be prescribed in the bylaws, and shall fill any vacancy that may occur. They shall also have power to appoint any agents necessary for transacting the business of the company, pay such salaries and require such bonds as they may deem reasonable; and it shall be their duty to keep full and correct entries of their transactions, which shall at all times be open to the inspection of the stockholders. ~~All contracts made by the company shall be signed by the president or vice-president, and secretary, but such requirement shall not apply to any contract now in existence or hereafter entered into between the company and its agents.~~

**History:** L. 1927, ch. 231, **40-306**; L. 1973, ch. 192, § 1; July 1.