

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 12, 2007 in Room 313-S of the Capitol.

All members were present except:

Kevin Yoder- excused
Pat Colloton- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Melissa Wangemann, Office of Secretary of State
Rich Hayse, Kansas Bar Association
Jeanne Turner, Chief Clerk, 5th Judicial District

The hearing on **SB 259 - secretary of state, corporations and partnerships**, was opened.

Melissa Wangemann, Office of Secretary of State, explained that the intent of the bill was to clean up business entities laws by creating uniform standards with regard to signature requirements for documents filed with the Secretary of State. It also requires that documents be dated and signed by an officer under penalty of perjury. (Attachment 1)

The hearing on **SB 259** was closed.

The hearing on **SB 162 - corporations, actions taken without meeting, notice or vote**, was opened.

Rich Hayse, Kansas Bar Association, appeared before the committee in support of the bill. He commented that the bill would delete the requirement for delivery by return receipt of stockholder or member consents authorizing an action of the corporation. (Attachment 2)

The hearing on **SB 162** was closed.

The hearing on **SB 55 - department of corrections, disposition of inmate compensation**, was opened.

Jeanne Turner, Chief Clerk, 5th Judicial District, appeared before the committee as a proponent to the bill. She stated that it would allow the Secretary of corrections to remit money earned by an inmate to the court for payment of restitution and fees. (Attachment 3)

The hearing on **SB 55** was closed.

SB 259 - secretary of state, corporations and partnerships

Representative Owens made the motion to report SB 259 favorably for passage. Representative Watkins seconded the motion. The motion carried.

SB 162 - corporations, actions taken without meeting, notice or vote

Representative Watkins made the motion to report SB 162 favorably for passage. Representative Crow seconded the motion. The motion carried.

Committee minutes from February 15, 20 & 28 were distributed by e-mail. If no changes are requested by March 15, 2007 they will stand approved.

The committee meeting adjourned at 4:00. The next meeting was scheduled for March 13, 2007.

RON THORNBURGH
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 259

MARCH 12, 2007

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 259, a bill requested by the Secretary of State.

SB 259 is intended to create uniform standards among the different business entities with regard to resident agents and signature requirements. The bill also contains some cleanup provisions to add clarity to the law.

1. Resident Agents. All business entity types are required to maintain a resident agent for the purpose of accepting service of process for the business entity. The standard for who may serve as resident agent varies from entity to entity, depending on how recently the law pertaining to that type of entity has been amended. The Corporate Code and the LLC Act were both amended in recent years and the lists of potential agents were expanded for those two types. LPs and others who have not seen recent amendments to the law are restricted on who may serve as resident agent. SB 259 creates a uniform standard – an individual, the entity itself, or a domestic or foreign corporation, limited partnership, limited liability company or business trust may serve as resident agent.
2. Signature Requirements. Documents signed by business entities and filed with the Secretary of State are dated and signed by an officer under penalty of perjury in most cases; however, a few of the entities do not contain these requirements. These requirements are added to all business entities so that the standard for signatures is uniform from entity to entity.
3. Professional Associations. The Secretary of State is required under current law to provide a duplicate copy of a professional association's annual report to the regulatory board that oversees the PA. Some boards have notified the Secretary of State they do not want to receive these copies; however, the law requires that we forward them. SB 259 would require us to forward a copy of the report only upon request. It is our intent to honor a standing request from any regulatory board for annual report copies – we will not require renewed requests every year.
4. Agricultural Partnerships. The term "limited corporate partnerships" was replaced by "limited agricultural partnerships" in Kansas laws pertaining to agricultural business entities in 1986. Two references to the outdated term are cleaned up in sections 13 and 14 of the bill.

5. Reinstatements. An entity may reinstate its existence with the Secretary of State after it has forfeited, which generally occurs for failing to file the annual report and/or paying the annual report fee. The statute is amended to clarify that reinstatement may occur after failing to file reports or pay the annual report fee – the current language indicates that reinstatement is available for entities that failed to pay taxes, a reference to the former franchise tax that was paid to the Secretary of State. Also, the term reinstatement is added throughout the statute because cross references in other statutes use that term and not “restoration” or “revival.”

The Senate Judiciary Committee made one minor amendment to section 6 on reinstatements. Language was added to clarify that reinstatements are allowed for nonpayment of the annual report fee.

I appreciate the opportunity to appear today and would be happy to answer questions.

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



KANSAS BAR
ASSOCIATION

BEFORE THE KANSAS HOUSE JUDICIARY COMMITTEE
MARCH 12, 2007
TESTIMONY IN SUPPORT OF SB 162
BY RICHARD F. HAYSE
ON BEHALF OF THE KANSAS BAR ASSOCIATION

This bill originated out of concerns expressed by lawyer members of the Kansas Bar Association over a change to prior practice in Kansas concerning consents to corporate action. The Kansas corporation code has long permitted corporate directors, stockholders of for-profit corporations, or members of non-profit corporations, to consent to a proposed action without a meeting by following the statutory procedures. For action by directors, such statutory authorization is found in KSA 17-6301(f); for stockholders or members, the authority is in KSA 17-6518.

The 2004 session of the Legislature adopted an extensive revision of the corporation code as a result of a study by an ad hoc KBA committee to update the code and bring it into conformity with ongoing revisions to the Delaware corporation code. Consistent with the Delaware changes, the KBA committee had recommended amending KSA 17-6518 to require stockholders or members to return their written consents to the corporation by hand or by return receipt delivery, as used for service of process and other purposes under KSA 60-303. There is no comparable requirement for directors.

However, in practice this has proved needlessly burdensome since most companies which utilize the consent procedure are closely held. For instance, there seems no real reason to require the only two shareholders in a plumbing company to return a written consent to the corporation by certified mail or Federal Express. Likewise, it should be unnecessary to ask members of an incorporated church to use such methods.

For this reason we propose deleting the requirements for delivery of stockholder or member consents by return receipt delivery to allow reverting to the previous practice of using regular mail service.

This bill would also resolve an inadvertent ambiguity in voting procedures. Under Subsection (a) of KSA 17-6518, stockholders in a stock corporation must unanimously agree for any action by consent to be effective, while under Subsection (b), members of a non-stock corporation need only consent by the number that would be required to take action at a meeting. Subsection (e) of KSA 17-6518 muddied that distinction, and we propose to clarify the language to be consistent with Subsections (a) and (b).

As is apparent from the explanation above, this is a technical corrections bill.

* * *

House Judiciary

Date 3-12-07

Attachment # 2

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620-257-2383



Donna Oswald, President
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TESTIMONY
Monies remitted by Secretary of Corrections
K.S.A. 75-5268(f)

Chairman O'Neal and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding SB55.

K.S.A. 75-5268 allows the Secretary of Corrections to remit monies earned by inmates to the Clerk of the District Court for "payment of a reasonable amount pursuant to an order of restitution."

Many times an inmate is released from incarceration thinking that their financial obligations to the Court are fulfilled, only to find that their name and account has been turned over to a collection agency. This discrepancy occurs when the Secretary of Corrections tells them that they owe no more restitution. However, there are many court costs, fines, and fees that are still due apart from the restitution that has been paid.

By changing the statute to read ". . . for all costs, fines, fees and restitution accessed. . ." a large number of misunderstandings can be avoided and an increased amount of money owed to the Court can be collected.

Thank you for your consideration.

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Ann McNett, Treasurer
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S
E House Judiciary
F Date 3-12-07
I Attachment # 3
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