

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on January 31, 2008, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen arrived, 9:40 A.M.  
Donald Betts- excused  
Dwayne Umbarger arrived, 9:43 A.M.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Bruce Kinzie, Office of Revisor of Statutes  
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Melissa Wangeman, Legal Counsel, Deputy Assistant Secretary of State  
Leslie Kaufman, Executive Director, Kansas Cooperative Council

Others attending:

See attached list.

Bill Introductions

Senator Derek Schmidt requested introduction of a bill regarding changes to the code of civil procedure amending K.S.A. 60-427, 60-2003 and 60-2006 and repealing the existing sections. Senator Lynn moved, Senator Bruce seconded, to introduce the bill. Motion carried.

The hearing on SB 448–Applicability of Kansas general corporation code to certain cooperative was opened.

Melissa Wangeman spoke in favor, indicating in a review of the cooperative laws, it was found that the general corporate code needed to apply to those cooperative laws in order to fill in gaps in the cooperative acts (Attachment 1). Ms. Wangeman stated that the Kansas Cooperative Council, Kansas Electric Cooperatives, and the Kansas Electric Power Cooperative are in agreement with the bill.

Leslie Kaufman appeared in support, stating the proposed changes are not problematic to the co-op family and recommends the bill (Attachment 2).

There being no further conferees, the hearing SB 448 was closed.

The Chairman opened the hearing on SB 449–UCC secured transactions, striking forms.

Melissa Wangeman testified in support, stating SB 449 eliminates from statute the forms for financing statements and amendments filed pursuant to the Uniform Commercial Code and allows the Secretary of State to prescribe the forms (Attachment 3). The forms listed are out of date and the International Association of Commercial Administrators no longer promotes these statutory forms. Enactment of this bill will help protect the private information of filers.

There being no further conferees, the hearing SB 449 was closed.

The hearing on SB 450–Cemetery corporations, investment of permanent maintenance fund was opened.

Melissa Wangeman spoke as a proponent. SB 450 will remove the ability of a cemetery corporation to use its permanent maintenance fund to build a mausoleum (Attachment 4). Current law allows such action and

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on January 31, 2008, in Room 123-S of the Capitol.

the Secretary of State believes this exception is bad policy and should be repealed. The permanent maintenance fund should be used exclusively for maintenance and reducing the prospect of the cemetery becoming the responsibility of its local government.

There being no further conferees, the hearing **SB 450** was closed.

The Chairman called for final action on **SB 424—Oil and gas leases, distribution of monies deposited with the court**. Senator Vratil reviewed the bill heard on January 28.

Senator Journey moved, Senator Goodwin seconded, to recommend **SB 424** favorably for passage. Motion carried.

The Chairman called for final action **SB 423—Notice of filing of foreign judgment**.

Chairman Vratil reviewed the bill. There was an amendment proposed by Alice Adams in her testimony on January 24 (Attachment 5).

Senator Journey moved, Senator Goodwin seconded, to amend **SB 423** as recommended in the testimony of Alice Adams on January 24. Motion carried.

Senator Journey moved, Senator Bruce seconded, to recommend **SB 423** as amended, favorably for passage. Motion carried.

The meeting adjourned at 9:55 A.M. The next scheduled meeting is February 4, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 31, 2008

NAME	REPRESENTING
Melissa Waagemann	Sec of State
Marilyn Nichols	Ks. Register of Wills Assoc.
Kathy Sachs	Secretary of State
Mandi Kohake	Secretary of State
Mack Smith	KS ST Bd of Mortuary Arts
Pam Scott	<del>KF</del> KS Funeral Directors Assn
Dave Dayreult	Ks Indep. Oil & Gas Assn
Diane Gaede	Manhattan / Flint Hills leadership
Jesse Boyon	Sec. of State
Heather Morgan	SSA
Scott Heibner	KADC
Dan Murray	Fed Consulting
Leslie Kaufman	Ko Co-op Council
Chele Hartle	KS Assn for Justice (Ks A.J.)
Emily Jaw	Hein Law
Jeff Bokky	KSA

RON THORNBURGH  
Secretary of State



Memorial Hall, 1st Floor  
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TESTIMONY OF THE SECRETARY OF STATE  
TO THE SENATE JUDICIARY COMMITTEE  
ON SB 448

JANUARY 31, 2008

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 448, a bill requested by the Secretary of State.

SB 448 ties the general corporate code to cooperative associations; specifically, cooperative societies, electric cooperatives and renewable energy electric cooperatives.

Our office is currently reviewing business entity laws and their filings with our office as we prepare to build a new filing system. While reviewing the cooperative laws last summer we concluded that the general corporate code had to apply to them in order to fill in gaps found in the cooperative acts. Without reference to the general corporate code, cooperatives have no authority to file corrections or restated articles of incorporations with the Secretary of State's Office. More importantly, these cooperatives have no authority to file a certificate of reinstatement, a document that reinstates the entity after forfeiture. Cooperative societies also cannot participate in mergers without the tie-in to the general corporate code.

We reviewed our proposed bill with the Kansas Cooperative Council, Kansas Electric Cooperatives, and the Kansas Electric Power Cooperative. All parties agree that the general corporate code is assumed to apply now, and that a clarifying amendment would provide notice to the public of that relationship.

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

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

Senate Judiciary  
1-31-08  
Attachment 1





**Kansas Cooperative Council**

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## Senate Judiciary Committee

January 30, 2008

Topeka, Kansas

### **SB 448 - Clarifying the general corporation code applies to certain cooperatives.**

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to comment today in support of SB 448 in its current form. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director. The Kansas Cooperative Council is a voluntary trade association representing all forms of cooperative businesses across the state, including agricultural, utility, credit, financial and consumer cooperatives.

Melissa Wangeman with the Kansas Secretary of State's office contacted our association several months ago about the possibility of clarifying that the general corporation code applies to cooperative entities (where not in conflict with the co-op statutes). As we drew closer to session, our discussions were more frequent. We certainly appreciate the Secretary of State and Melissa including us in these discussions. I believe the coordination ahead of the session has helped ensure this change could be recommended in a non-controversial manner.

The changes proposed in SB 448 are not problematic to the co-op family. The changes essentially take language from the cooperative marketing act (which most of our non-utility and non-financial cooperatives are organized under) and apply that to cooperative societies, rural electric co-ops and renewable energy electric generating cooperatives.

As such, we would respectfully request you pass SB 448 without amendment. Thank you for your consideration.

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

Senate Judiciary

1-31-08

Attachment 2

RON THORNBURGH  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE SENATE JUDICIARY COMMITTEE  
ON SB 449

JANUARY 31, 2008

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 449, a bill requested by the Secretary of State.

SB 449 eliminates from statute the forms for financing statements and amendments filed pursuant to the Uniform Commercial Code. The bill's new language allows the Secretary of State to prescribe the forms.

The forms listed in the statute date back before the July 1, 2001 effective date of Revised Article Nine of the Uniform Commercial Code, as they were created by the International Association of Commercial Administrators in 1998. The forms contain a field for social security number or federal employer identification number, even though that information is not required for filing a U.C.C. U.C.C. filings are public record and generally list names and addresses; thus, the inclusion of SSNs or FEINs makes these records ripe for identity theft.

Although our office has not received complaints about these records, nor have we heard any reports that any harm has resulted from these records, we believe eliminating forms with this information from public record is a good preventative measure. We note that the state of Ohio was sued by a victim of identity theft after the criminal obtained his SSN from the U.C.C. filing system, and both Virginia and Colorado were criticized by watchdog groups for the availability of SSNs in their U.C.C. databases. In 2007 the U.S. Inspector General released a report encouraging states to limit or eliminate use of SSNs on public record and the National Association of Secretaries of State held a symposium and issued a report on redacting SSNs from public record.

IACA no longer promotes these statutory forms, and their current version of the forms does not list SSNs or FEINs. The Kansas Secretary of State provides its own version of the forms to the public for use, which blackens out the SSN/FEIN box altogether to prevent the listing of any information in that box (we anticipated some customers would continue to write that information in that box based on habit). We would continue to accept the current version of IACA forms and our own model following passage of SB 449, but would not accept the outdated statutory forms.

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

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

Senate Judiciary

1-31-08

Attachment 3

**RON THORNBURGH**  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE SENATE JUDICIARY COMMITTEE  
ON SB 450

JANUARY 31, 2008

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 450, a bill requested by the Secretary of State.

SB 450 deletes the last sentence of K.S.A. 17-1349, removing the authority of a cemetery corporation to use its permanent maintenance fund to build a mausoleum.

Cemeteries are required to deposit 15% (but not less than \$25) of each burial lot sold into a trust fund with a trust company, state or national bank, or savings and loan association located in Kansas. The purpose of this trust fund is the future maintenance of the cemetery – it is used to preserve and maintain the cemetery after the cemetery no longer has an income source, i.e., all plots are sold. Kansas law protects this money by requiring that it be deposited in a trust account, which is subject to audit by the Secretary of State. No part of the principal in the trust account may be paid over to the cemetery without the Secretary of State's approval, and funds invested in the trust account are subject to prudent investor rules. Misuse of this fund is a Class D felony. If and when a cemetery's Permanent Maintenance Fund (PMF) is depleted and the cemetery can no longer maintain itself, the local governing body must be appointed as receiver and take over the maintenance of the cemetery. In other words, the local taxpayers become responsible for paying for the cemetery's upkeep.

As outlined above, Kansas laws generally protect this fund; however, K.S.A. 17-1349 allows the fund to be used for one type of capital improvement—building a mausoleum. The Secretary of State believes this exception in the law is bad policy and should be repealed. Our concern about this section was realized this last year when a cemetery was unable to repay its PMF following the erection of a mausoleum using PMF funds.

In closing, we emphasize that the PMF should be used exclusively for the cemetery's permanent maintenance and not redirected to other purposes; this policy reduces the prospect of the cemetery becoming the responsibility of its local government.

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

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

Senate Judiciary

1-31-08

Attachment 4

Donna Ald, President  
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FOREIGN JUDGMENTS – NOTICE OF FILING  
SB 423 – K.S.A. 60-3003  
TESTIMONY

By: Alice Adams, Clerk of the District Court  
Geary County District Court – 8<sup>th</sup> Judicial District

K.S.A. 60-3003 concerns the notice of filing of a foreign judgment. It requires that the judgment creditor or his or her attorney shall make and file with the clerk of the court an affidavit, setting forth the name and last known address of the judgment debtor and the judgment creditor.

Currently, section (b) requires that the clerk mail to the judgment debtor a notice of filing, including the name and address of the judgment creditor. Section (b) further states that the judgment creditor may mail a notice as well, and the lack of mailing of the notice of filing by the clerk of the district court shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Our association recommends that Section (b) read: “Promptly upon the filing of the foreign judgment and the affidavit, the judgment creditor or the judgment creditor’s lawyer shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor’s lawyer, if any, in this state.”

Upon reviewing the bill draft, it became apparent that an additional amendment is needed. We are requesting the deletion of additional language in current law that would no longer be needed. The two sentences that begin on line 26 of the bill should be amended to read as follows: “In addition, the judgment creditor may mail a notice of the filing of the judgment to the ~~judgment debtor~~ clerk of the district court and may file proof of mailing with the clerk of the district court. ~~Lack of mailing notice of filing by the clerk of the district court shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.~~”

It makes sense that if the judgment creditor supplies the information and is already allowed by statute to send the notice of filing, he or she could be required to send the notice of filing, thus removing one step and simplifying the process. At present the clerk is acting as an unnecessary middleman in this process. KADCCA feels that the statute no longer reflects current practice and should be changed to require the notice be mailed by the party filing the foreign judgment.

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Senate Judiciary  
1-31-08  
Attachment 5