

Approved: 3/17/09  
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 26, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Jeff King- excused  
Representative Annie Kuether- excused  
Representative Kay Wolf- excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Diane Minear, Deputy Assistant Secretary of State, Legal Counsel  
Webb Hecker, Professor-Kansas University Law School

Others attending:

See attached list.

The hearing on **SB 132 - Enacting business entity transaction act** was opened.

Diane Minear, Deputy Assistant Secretary of State, Legal Counsel, appeared as a proponent and presented an Executive Summary of this bill. This Act began as the Model Entity Transactions Act (META) and over a period of four years members of the American Bar Association and the National Conference on Commissioners on Uniform State Laws (NCCUSL) drafted the language and developed META. The Kansas Bar Association then took on the task of drafting a Kansas version of META, which they called the Business Entity Transactions Act (BETA). She explained META came about as a response to the proliferation of different entity types, each type with its own unique laws governing how it can merge or convert. She credited Melissa Wangemann and Professor Webb Hecker for their efforts to bring BETA to fruition. She stated they are requesting an effective date of July 1, 2010, so they may complete programs to their system before implementation of BETA. In addition, she requested an amendment with regard to Page 6, Section 10, Line 24 to include as an entity, "insurance companies organized". (Attachment 1)

Webb Hecker, Professor of Law at the University of Kansas Law School, provided further detail and support of BETA. He explained there are four major types of business entities; corporations, limited liability, partnerships and limited partnerships. The BETA will provide procedures for mergers, conversions, interest exchanges, and domestications of business and nonprofit entities. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process. He added that this bill would constitute a significant advance in Kansas statutory law by simplifying mixed entity mergers, extend and rationalize conversions, and introduce two entirely new and cost-effective kinds of transactions, 1) interest exchanges, and, 2) domestications. By implementing BETA he believes these changes would help solidify the reputation for the state of Kansas as being business friendly and in the forefront of 21<sup>st</sup> century business law innovation. (Attachment 2)

In answer to questions, Professor Hecker stated, in his opinion, implementing BETA would not increase any risks of fraud, etc.

Joe Melino, on behalf of the Kansas Bar Association, stated they supported this bill.

The hearing on **SB 132** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 26, 2009, in Room 143-N of the Capitol.

The hearing on **SB 85 - Secretary of state; return of filings** was opened.

Diane Minear, Deputy Assistant Secretary of State, appeared in support of this bill and to brief the committee on the changes. This bill seeks to change the language in four business entity statutes (K.S.A. 17-6003, 17-7301, 17-7678 AND 56-1A156), that uses varying language, to read "a certified copy of the recorded document". She further explained the Senate Judiciary committee amended this bill by removing the word "certified" and they respectfully request the word "certified" be returned to the bill. She stated their customers rely on the "certified" copy as it is often required by other agencies, banks and courts as proof of filing with the Secretary of State. Removing the word "certified" could create problems to their customers. They ask for an implementation date of July 1, 2010 in order to complete changes in their filing and imaging processes. In answer to several questions, she provided a more detailed description of the process of how the paper work is handled in their office in regards to the "certified" copy. (Attachment 3)

There were no opponents.

The hearing on **SB 85** was closed.

The hearing on **SB 86 - Secretary of state; letters of good standing** was opened.

Diane Minear, Deputy Assistant Secretary of State, appeared in support of this bill and to brief the committee on the changes. She explained this bill will amend K.S.A. 17-7506 by striking in paragraph (d), the words, "letters of good standing" and such change will reduce redundancies and streamline services. They ask for an implementation date of January 1 so they may complete an upgrade to their filing process and develop the new improved documentation. (Attachment 4)

There were no opponents.

The hearing on **SB 86** was closed.

**HB 2311 - Authorizing licensed private detectives to serve process statewide.**

Representative Pauls moved to report HB 2311 favorably for passage. Representative Brookens seconded the motion.

Representative Brookens made a substitute motion to the bill, amending KSA 75-7b03 to state "Any person performing duties as a court appointed process server when any investigation is conducted incidental to serving the legal process". Representative Crow seconded the motion.

This amendment was trying to clarify that you do not have to be a Private Investigator in order to serve processes. After further discussion and a review of the statute, it was agreed that such clarification was not necessary.

With the permission of the second, Representative Brookens withdrew his motion.

Representative Pauls moved the motion for passage of HB 2311. Motion carried.

The next meeting is scheduled for February 27, 2009.

The meeting was adjourned at 4:30 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 2-26-09

NAME	REPRESENTING
Sean Miller	CAPITOL STRATEGIES
Matt Casey	GBA
Whitney Damm	KS Bar Assn
Webb Hecker	Self
Diane Minear	Sec. OF State
Jackie Carlson	Sec. OF State
Natalie Haag	Security Benefit
Joseph Molnar	KS Bar Assoc.
Lance Walsh	Judicial Branch
Nancy Zogleman	Polsinelli

HOUSE JUDICIARY COMMITTEE EXECUTIVE SUMMARY  
SB 132: BUSINESS ENTITY TRANSACTIONS ACT  
February 26, 2009

Mr. Chairman and members of the Committee:

The Secretary of State thanks the Committee for the opportunity to present this Executive Summary for SB 132.

This Act began as the Model Entity Transactions Act (META). Over a period of four years, members of the American Bar Association and the National Conference on Commissioners on Uniform State Laws (NCCUSL) drafted language and developed META. The Kansas Bar Association then took on the task of drafting a Kansas version of META, which we now call the Business Entity Transactions Act (BETA). The Secretary of State credits Melissa Wangemann and Professor Webb Hecker for their efforts to bring BETA to fruition.

META came about as a response to the proliferation of different entity types, each type with its own unique laws governing how it can merge or convert. For example, current Kansas law allows LLCs to convert into LPs, but it excludes corporations from conversions. If corporations want to convert, they must undertake a multi-step process to dissolve and reform, or find other less direct, more time consuming and more expensive avenues to become another type of entity. BETA applies consistent, universal rules across all entity types. This allows a more fluid and straightforward transformation and encourages cross entity type transactions.

BETA provides procedures for business entities such as corporations, limited liability companies, partnerships, limited partnerships and limited liability partnerships to perform four kinds of transactions. Some, but not all, of these transactions are already allowed on a limited basis under Kansas law. BETA will make these transactions more universally possible.

BETA provides procedures for business entities to perform:

Mergers--two or more entities are combined into a surviving entity (ABC Inc. and DEF Inc. become DEF Inc.).

Conversions--a single entity transforms itself into a different type of entity (a corporation becomes a LLC).

Interest Exchanges--one entity acquires the stock of another entity.

Domestications--a domestic entity becomes a foreign entity of the same type, and vice versa (a Kansas LP becomes a Missouri LP).

We request the effective date of this bill be July 1, 2010, so that we may complete improvements to our filing process and program our system to manage the filings provided for in BETA.

Diane Minear  
Deputy Assistant Secretary of State  
Legal Counsel

House Judiciary

Date 2-26-09

Attachment # 1

TESTIMONY OF EDWIN W. HECKER, JR.  
TO THE HOUSE JUDICIARY COMMITTEE  
ON SB 132

FEBRUARY 26, 2009

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear today to brief the Committee and answer questions relating to SB 132, a bill requested by the Secretary of State and the Kansas Bar Association.

SB 132 is entitled the Business Entity Transactions Act (BETA). It is a close copy of the Model Entity Transactions Act (META) with minor changes necessary to integrate it and make it consistent with existing Kansas law. META is the culmination of a joint project of the National Conference of Commissioners on Uniform State Laws and the American Bar Association. Its drafters describe it as follows:

The Model Entity Transactions Act provides procedures for mergers, conversions, interest exchanges, and domestications of business and nonprofit entities, including partnerships, limited partnerships, limited liability companies and corporations. Cross entity transactions of these kinds are made more universally possible. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process.

Melissa A. Wangemann, then Kansas Deputy Assistant Secretary of State and Legal Counsel, became interested in the META project and was one of three official observers of the national drafting process. At the state level, she organized a committee to study META with a view toward its possible adoption in Kansas. The study committee consisted of W. Robert Alderson, Jr. of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C.; Charles D. Lee of Martindell, Swearer & Shaffer; Kathleen A. Olsen of the Kansas Bankers Association; William R. Wood II of Foulston Siefkin LLP; and myself. SB 132 is the product of the work of that committee.

Since the early 1990s, there has been a proliferation of different types of business entities, in Kansas and elsewhere. Presently, the four major types are corporations, limited liability companies, partnerships (including limited liability partnerships), and limited partnerships (including limited liability limited partnerships). In Kansas, each has its own governing statute that authorizes mergers with like entities. The statutes that govern partnerships and limited liability companies also authorize them to convert into some other type of unincorporated entity without the necessity of dissolving and reorganizing. But they cannot convert into a corporation. Nor is there a statute that permits a corporation to convert into any other type of entity. Kansas also has a so-called mixed entity merger statute that broadly authorizes and regulates mergers between dissimilar

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Attachment # 2



entities of all types. It does not, however, authorize transactions other than mergers. Finally, there is no statutory authorization in Kansas for mandatory interest exchanges or domestications with respect to any type of entity.

SB 132, BETA, seeks both to fill these voids and rationalize existing law with a comprehensive statute that substantively authorizes four types of mixed entity (and in some cases similar entity) transactions, coupled with parallel procedures for the authorization of those transactions. It consists of six articles that address: (1) definitions and generally applicable provisions; (2) mergers; (3) interest exchanges; (4) conversions; (5) domestications; and (6) execution and filing requirements, amendment and repeal of other statutes, effective date, etc. Although I do not wish to prolong these remarks unduly, with your indulgence I would like to highlight just a few points in each of the six articles.

Article 1 (sections 1-10), in its definition of "entity," lists all of the various generic types of entities to which the bill applies. Article 1 also excludes coverage of insurance companies, banks, trust companies, credit unions, and professional corporations and limited liability companies. It includes public utilities, however, subject to any inconsistent provisions in Chapter 66 of K.S.A.

Article 2 (sections 11-16) governs mergers. It begins by excluding mergers of two or more corporations, two or more limited partnerships, two or more partnerships, and two or more limited liability companies. The reason is that the separate statutes governing these four types of entities already provide for mergers between like kind entities, so there is no need for redundant coverage under BETA. Article 2 then goes on to provide a procedure to accomplish primarily mixed entity mergers that also serves as a template for the other three substantive articles as well. First, an agreement of merger is negotiated by the two or more entities that wish to merge. Second, the merger agreement must be approved by each entity in the same manner as that required by its governing statute and internal governing documents for a merger with a similar entity. If an entity's governing statute and internal rules do not provide for approval of a like-kind merger, the agreement must receive the unanimous approval of all interest holders who have voting rights. The surviving entity then must file a certificate of merger with the Secretary of State, after which the merger will become effective.

Article 3 (sections 17-22) authorizes interest exchanges, which are new to Kansas law, and therefore applies to both similar entity and mixed entity transactions. In an acquisition cast in the form of a simple merger, the acquiring entity survives with the combined assets, liabilities, rights, powers, privileges, restrictions, etc. of both entities, and the acquired entity disappears. Under current law, if the acquiring entity wishes to keep the acquired entity in existence and operate it as a wholly-owned subsidiary, it has only two alternatives, both of which are unnecessarily complicated. It can engage in a reverse triangular merger, in which it creates a paper shell subsidiary which is then merged into the acquired entity with the acquired entity surviving; the interest holders of the acquired entity receive interests in the acquiring entity and/or cash; and the acquiring entity's interests in the disappearing shell subsidiary are converted into interests in the

acquired entity. Alternatively, the acquiring entity can make a direct offer to purchase the interests of the individual interest holders of the acquired entity. This will rarely result in acquiring all of the outstanding interests in the acquired entity, and so a follow up reverse triangular merger will be necessary if complete ownership is desired. BETA allows acquisition of a previously unrelated entity as a subsidiary simply and directly with an “interest exchange,” in which all of at least one class of interests in the acquired entity are exchanged for interests in the acquiring entity and/or cash, pursuant to an agreement of interest exchange negotiated between the two entities. From the acquired entity’s point of view, the transaction is accomplished like a merger, including appraisal rights for dissenters if they would have had them in a merger. Unlike a merger, approval by the interest holders of the acquiring entity generally is not required. This is consistent with current law governing triangular mergers and outright interest purchases and reflects the policy that such a transaction is not necessarily a fundamental organic change as to that entity. That is, the entity simply is purchasing some new assets—interests in another entity. Of course, it is entirely permissible to include an approval requirement in the governing documents of the acquiring entity, if desired. Like a merger, an interest exchange becomes effective upon filing a certificate of interest exchange with the Secretary of State.

Article 4 (sections 23-28) expands existing law to permit any entity to convert itself into a different form without the necessity of dissolving and reorganizing. It follows the same pattern of approval of an agreement and filing a certificate as that governing mergers, but the process is simpler because only a single entity is involved. Importantly, the rights of creditors of the original entity are preserved unimpaired just as if the conversion had not occurred. Because Article 4 is intended to be comprehensive, the overlapping provisions of current partnership and limited liability company law that permit only certain kinds of conversions are repealed by Article 6 (sections 35-52).

Domestication statutes permit an entity to change its jurisdiction (state) of organization without having to dissolve in the original jurisdiction and reorganize in the new one. Because Kansas presently has no domestication laws, Article 5 (sections 29-34), like Article 3 (sections 17-22), represents a major advance. If SB 132 becomes law, a Kansas entity could domesticate in a foreign (different) jurisdiction, or a foreign entity could domesticate in Kansas, assuming a reciprocal law in the foreign jurisdiction. Article 5 follows the familiar pattern of approval of an agreement of domestication, filing a certificate of domestication, and effectiveness. It is even simpler than Article 4 (sections 23-28), however, because all transactions are not only single entity but also same entity.

Finally, Article 6 (sections 35-52) makes certain additional conforming changes in the statutes governing partnerships and limited liability companies and repeals the existing mixed entity merger statute.

It is apparent to me that SB 132 would constitute a significant advance in Kansas statutory business law. It would simplify mixed entity mergers; extend and rationalize conversions; and introduce two entirely new and cost-effective kinds of transactions:

interest exchanges and domestications. If enacted, it would solidify the state's reputation as being business-friendly and in the forefront of 21<sup>st</sup> century business law innovation.

The opinions I have expressed are my own and do not necessarily represent the views of the University of Kansas. Thank you for your patience and the opportunity to appear today. I would be happy to try to answer any questions you may have.

Edwin W. Hecker, Jr.  
Professor of Law



TESTIMONY OF THE SECRETARY OF STATE TO  
THE HOUSE JUDICIARY COMMITTEE ON  
SB 85

February 26, 2009

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 85, a bill requested by the Secretary of State.

This bill seeks to change language in four business entity statutes (K.S.A. 17-6003, 17-7301, 17-7678, and 56-1a156) regarding filed documents our office returns to customers. These statutes use varying language referring to original documents, including:

- “the original instrument as a certified copy of the original recorded instrument”
- “the original, certified”
- “the original document, certified as a true copy of the recorded document”

The Secretary of State requests the committee amend the language in each statute to “a certified copy of the recorded document.” The Senate Judiciary committee amended SB 85 by removing the word “certified” from the bill. We respectfully request the word “certified” be returned to the bill as per our original proposal. Our customers rely on the certified copy as it is often required by other agencies, banks, and courts as proof of filing with the Secretary of State. Removing the word “certified” could be problematic for our customers. I might also add that certifying the document will not add a cost to the customer.

The Secretary of State requests this bill in order to accommodate a change in our filing process that we expect to implement in 2010. At that time, we plan to return copies of documents to customers, not the original documents. The copies will be imaged and file stamped and will represent exactly what is stored in our filing system. For this reason, we have requested a delayed effective date of July 1, 2010.

We also made this request to provide consistency in the language and reduce confusion among our customers about what we return to them upon filing their document. With our new filing process, we will not physically move the original paper document through the filing steps (data entry, accounting, scanning, customer correspondence) as we currently do; it will instead be routed electronically. If we return a copy of the filed document, the customer can verify that the document was filed as they intended.

There will be no fiscal impact on the Secretary of State or the State General Fund. I will stand for questions.

Diane Minear  
Deputy Assistant Secretary of State  
Legal Counsel

House Judiciary

Date 2-26-09

Attachment # 3

TESTIMONY OF THE SECRETARY OF STATE TO  
THE HOUSE JUDICIARY COMMITTEE ON  
SB 86

February 26, 2009

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 86, a bill requested by the Secretary of State.

This bill seeks to amend K.S.A. 17-7506 by striking in paragraph (d), the words, "letters of good standing".

This change will reduce redundancies and streamline services. Currently, our office provides customers the option to order from us a Letter of Good Standing (LGS) and/or a Certificate of Good Standing (CGS). The data provided in the LGS is very similar to that in the CGS. Essentially, we provide duplicate services and there is little value to the customer in providing both documents; often it creates unnecessary confusion for the customer.

Our office will incorporate the information currently provided in the Letter of Good Standing into the Certificate of Good Standing so that our customers suffer no loss in data that they may have found valuable.

We request that the effective date be amended to January 1, 2010 so that we may complete an upgrade to our filing process and develop this new improved document.

There will be no fiscal impact to the State General Fund. We anticipate a reduction in our fee funds of \$68,000. We plan to manage this reduction in revenue by streamlining services and reassigning staff.

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

Diane Minear  
Deputy Assistant Secretary of State  
Legal Counsel

House Judiciary  
Date 2-26-09  
Attachment # 4