

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 2, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Raj Goyle- excused  
Representative Milack Talia- excused  
Representative Jim Ward- excused  
Representative Kevin Yoder- excused

Committee staff present:

Jason Long, 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  
Lauren Douglass, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Chris Swickard, Kansas Bar Association

Others attending:

See attached list.

The hearing on **SB 398 - Indemnification; amendments to certificate of incorporation or corporate bylaws** was opened.

Jason Long, from the Office of Revisor of Statutes, presented an overview of the bill to the committee that amends K.S.A. 17-6305, which governs the indemnification by a corporation of its directors, officers, employees and agents. Whenever such an individual acts in good faith and with reasonable belief they were acting lawfully and in the best interests of the corporation, the corporation may pay such individual's expenses, judgments, fines or settlement amounts arising out of a lawsuit against the individual based on those actions. This bill amends the statute to protect the individual's right to indemnification from being eliminated by the corporation. ([Attachment 1](#))

Chris Swickard, on behalf of the Kansas Bar Association, appeared before the committee as a proponent and stated the Kansas Bar Association Corporate Counsel Section requested this bill to address issues raised by a recent Delaware court case of *Schoon v Troy Corp*. He also explained the Delaware General Corporation Code was amended in a manner that effectively reverses the outcome in *Schoon* and that amendment was effective August 1, 2009. Since Kansas indemnification statute, K.S.A. 17-6305 is patterned off the Delaware statute, this bill adds the same language to the Kansas statute, at subsection (f), as was added to the Delaware statute. He also stated these changes are important to Kansas corporations because they allow us to remain competitive in the recruitment of senior officers and directors for our companies. ([Attachment 2](#))

There were no opponents.

The hearing on **SB 398** was closed.

The hearing on **SB 376 - Changing the name of the act for judicial review and civil enforcement of agency actions to the Kansas judicial review act** was opened.

Matt Sterling, from the Office of Revisor of Statutes, presented an overview of the bill to the committee which amends a number of statutes that referred to the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. During the 2009 Legislative session, **SB 87** was passed, amending the act for judicial review and civil enforcement of agency actions and changing the name of the act to the Kansas Judicial Review Act. However, in changing the name of the act, there was no change made to the references to the act in other statutes. **SB 376** changes all the references to the act for judicial review and civil enforcement of agency actions in statute to refer to the new name of the act, the Kansas Judicial Review

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 2, 2010, in Room 346-S of the Capitol.

Act. (Attachment 3)

There were no proponents and there were no opponents since this was basically a revisor's correction to change the references to refer to the new name of the act.

After a brief discussion among the members of the committee, the hearing on **SB 376** was closed.

The next meeting is scheduled for March 3, 2010.

The meeting was adjourned at 3:52 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 3-2-10

NAME	REPRESENTING
Chris Swickard	Kansas Bar Association
Joseph Mohr	KS BAR ASSN
Whitney Jamm	KS Bar Assn.
Sean Miller	CAPITOL STRATEGIES
Austin LaFreniere	Rep. Carl Holmes
Pete Bodyk	KDOT
Aly Rausch	Interu-Talia
Patrick Vogelsberg	Kearney and Associates
Lane Wilson	Judicial Branch

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES  
JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR  
GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

**Brief on Senate Bill 398**  
**Right of Indemnification by a Corporation**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 2, 2010

---

SB 398 amends K.S.A. 17-6305, which governs the indemnification by a corporation of its directors, officers, employees and agents. Whenever such an individual acts in good faith and with a reasonable belief they were acting lawfully and in the best interests of the corporation, the corporation may pay such individual's expenses, judgments, fines or settlement amounts arising out of a lawsuit against the individual based on those actions. The bill amends the statute to protect the individual's right to indemnification from being eliminated by the corporation.

The bill is in response to the Delaware court case of *Schoon v. Troy Corp.* In that case a director of the defendant corporation resigned. Soon afterwards the corporation amended its bylaws to eliminate the right of a former director to indemnification by the corporation. After the bylaw amendment became effective the corporation sued the former director for breach of fiduciary duty. The former director sought indemnification by the corporation. The Delaware court held that the right of indemnification did not vest until a claim was brought against the former director. Since the bylaw was amended prior to the claim being brought, the corporation could eliminate the right of indemnification by amending its bylaws, and therefore, was not obligated to indemnify the former director.

Delaware amended its general corporation code to effectively reverse the outcome of the *Schoon* decision. The same amendment is included in SB 398 on page 3, lines 6 - 14. The new language provides that a right of indemnification cannot be eliminated after the occurrence of the act or omission that gives rise to a claim against the individual, unless the bylaws explicitly authorize such elimination after the act or omission has occurred. Once the act or omission has occurred the individual's right to indemnification is vested and cannot be eliminated by future bylaw amendment unless the bylaws, in effect at the time of the act or omission, provide for such future amendment.



KANSAS BAR  
ASSOCIATION

TO: The Honorable Lance Kinzer, Chair  
And members of the House Judiciary Committee

FROM: Chris Swickard  
On behalf of the Kansas Bar Association

RE: SB 398 – Indemnification of corporate officers

DATE: March 2, 2010

Chairman Kinzer and Members of the House Judiciary Committee my name is Chris Swickard and I appear before you today on behalf of the Kansas Bar Association in support of SB 398. Senate Bill 398 was proposed by the Kansas Bar Association Corporate Counsel Section to address issues raised by a recent Delaware court case. As you know, the Kansas Corporation Code is modeled after the Delaware Code. The proposed amendments are will bring the Kansas Corporation Code back into conformance with the Delaware Code on the issues raised in the court case.

The case at issue is *Schoon et. al. v. Troy Corporation*, the Delaware Court of Chancery, where the court determined that a company's bylaws may be amended to deprive a director or officer of indemnification rights in respect of a claim arising out of conduct that occurred prior to such an amendment, so long as the proceeding is commenced after the bylaw is amended.

In the *Schoon* case, a director of Troy Corporation, a Delaware corporation, resigned. Later that year, Troy amended its bylaws to eliminate the right of *former* directors to advancement of expenses incurred to defend claims. A few months after amending the bylaws, Troy sued the director for breach of fiduciary duty. The director asked Troy to advance his defense costs. Troy declined, the director sued and lost. The Chancery Court held that while a bylaw amendment cannot rescind a vested contract right, the director's right to advancement in this case was not vested at the time of Troy's bylaw amendment because no claim had been made against the director at that time.

The Delaware General Corporation Code was amended in a manner that effectively reverses the outcome in *Schoon*. I have included a copy of the Delaware amendment for your comparison to Senate Bill 398. The Delaware amendment was effected by adding the following sentence to the end of section 145(f) of the DGCL:

House Judiciary

Date 3-2-10

Attachment # 2

“A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.”

The amendment became effective on August 1, 2009.

The Kansas indemnification statute, K.S.A. 17-6305, is patterned off the Delaware statute. Senate Bill 398 adds the same language to the Kansas statute (at subsection (f) of K.S.A. 17-6305) as was added to the Delaware statute.

These changes are important to Kansas Corporations because they allow us to remain competitive in the recruitment of senior officers and directors for our companies.

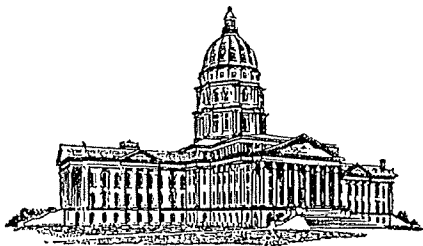
We encourage you to adopt Senate Bill 398.

Thank you.

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

MEMORANDUM

To: Chairman Kinzer and members of the House Committee on Judiciary  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: March 2, 2010  
Subject: Senate Bill No. 376

SB 376 amends a number of statutes that referred to the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. During the 2009 legislative session, the Legislature passed SB 87, amending the act for judicial review and civil enforcement of agency actions and changing the name of the act to the Kansas Judicial Review Act. However, in changing the name of the act, there was no change made to the references to the act in other statutes. SB 376 changes all the references to the act for judicial review and civil enforcement of agency actions in statute to refer to the new name of the act, the Kansas Judicial Review Act.