

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

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

All members were present except:  
Representative Jeff King- excused

Committee staff present:  
Jason Long, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:  
Sheri Smiley, Attorney for Secretary of State

Others attending:  
See attached list.

The hearing on **SB 437 - Secretary of state; resident agent filing requirements** was opened.

Jason Long, from the Office of the Revisors of Statutes, provided the committee with an overview of the bill that establishes a new section of the law that requires Kansas limited liability partnerships to have a registered office on file with the Secretary of State and to appoint a resident agent for the L.L.P. (Attachment 1)

Sheri Smiley, Staff Attorney for the Secretary of State, spoke before the committee as a proponent to this bill regarding resident agents for Limited Liability Partnerships and regarding a change of name and a change of address form for resident's agents that are on file with their office. They support the language regarding resident agents from current Limited Partnership law being mirrored in the Limited Liability Partnership law as it helps standardize Kansas formal filing requirements. In addition, she explained under current law, KSA 17-6204, a resident agent can file a certificate to change their name, or a certificate to change their address and they recommend clarifying the law to allow both changes to occur on one document as it would eliminate the extra costly and cumbersome filing for the resident agent when both changes occur. (Attachment 2)

After questions and discussion, Chairman Kinzer asked the staff to check with the Uniform Laws Commission and (1) see if there are any other states that have the Uniform Partnership Act that deviates and requires the resident agent provision, and (2) see if they know of any potential unintended consequences by making such a deviation.

In addition, a question was addressed to Sheri Smiley asking for further verification regarding the fee statute and to also verify with Rules and Regulations to be sure the fee is covered.

The hearing on **SB 437** was closed.

The hearing on **SB 438 - Business trusts; required filings with the secretary of state** was opened.

Jason Long, from the Office of the Revisors of Statutes, provided the committee with an overview of the bill that amends K.S.A. 17-2030, which governs filings that Business Trusts must submit to the Secretary of State, and under this bill they would no longer be required to file a balance sheet with the Secretary of State. (Attachment 3)

Sheri Smiley, Staff Attorney for the Secretary of State, appeared before the committee and explained the legislature eliminated the requirement to file balance sheets from the annual reports in 2005 and that no other business entity is required to submit a balance sheet at the time of formation. This bill removes balance sheets from these entities' formation document and creates uniformity and consistency among formation documents, and is in line with Delaware law. (Attachment 4)

There were no opponents.

CONTINUATION SHEET

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

The hearing on **SB 438** was closed.

The hearing on **SB 439 - Kansas register; contents, procedure for submitting materials for publication** was opened.

Jason Long, from the Office of the Revisors of Statutes, provided the committee with an overview of the bill that makes statutory amendments regarding the publication of the Kansas Register. (Attachment 5)

Sheri Smiley, Staff Attorney for the Secretary of State, appeared before the committee and stated the statutes authorizing and prescribing requirements for publication of the Kansas Register have become increasingly outdated since their inception in 1982 and this bill allows amending the Register-related statutes to better organize the subject matter and clean up and remove outdated and duplicative language. The section addressing distribution of the Register has been amended to clarify that paper copies shall be made available upon payment of a fee fixed by the Secretary of State. The register is available electronically at no charge. (Attachment 6)

The hearing on **SB 439** was closed.

**SB 398 - Indemnification; amendments to certificate of incorporation or corporate bylaws**

Representative Brookens made the motion to report SB 398 favorably for passage.  
Representative Kleeb seconded the motion. Motion carried.

**SCR 1615 - Urging congress and the President to respect the 10<sup>th</sup> amendment and refrain from passing laws intruding on states' rights.**

Representative Yoder made the motion to report HCR 1615 favorably for passage.  
Representative Kleeb seconded the motion.

Representative Talia made the substitute motion to amend the bill to strike the word "are" and insert the words "may be" on page 1, line 32.  
Representative Ward seconded the motion. Motion carried.

Representative Ward made the motion to amend the bill on page 2, as follows:

- 1) In Line 21, before the last "the," insert "the Minority Leader of the United States Senate"
- 2) In Line 22, strike all after "Representatives"
- 3) Strike all in line 23
- 4) In line 24, strike all before "and," and insert, "the Minority Leader of the United States House of Representatives"
- 5) Add sending this to the Chair and Ranking Member of the Senate and House Intelligence Committees ("as these are the people who authorized the President of the United States to take access to our emails, text messages and phones; did not question the torture procedures used and did not stand up for our Constitutional rights.")

Representative Kuether seconded the motion.

After discussion, it was requested to split the above items for voting purposes:  
Items (1) through (4) into Question A. Motion carried.  
Item (5) as Question B. Motion Failed.

Representative Grange made the motion to amend the bill to add the following to page 2, Line 19, after "That", insert "the Secretary of State be directed to provide."  
Representative Ward seconded the motion. Motion carried.

Representative Kuether made a motion to table SCR 1615.  
Representative Talia seconded the motion.  
Chairman Kinzer stated a motion to table is a priority motion and undebatable.  
Motion carried.

CONTINUATION SHEET

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

The next meeting is scheduled for March 4, 2010.

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

# JUDICIARY COMMITTEE GUEST LIST

DATE: 3/3/10

NAME	REPRESENTING
Shen Smiley	Ks. Sec. of State
Nancy Reddy	Sec of State
Joe Molun	Ks BAR Assn
Jocelaie Carlson	Ks. Sec. of State
Diane Minear	Ks Sec. of State
Lane Wash	Jud. Branch
Lugh Keck	Hein Law firm
RJ Wilson	KSAJ
Pete Bodyk	KDOT
Whitney Jamron	KS Bar Assn

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



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Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
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**Brief on SB 437**  
**Resident Agent Filing Requirements**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 3, 2010

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SB 437 creates resident agent filing requirements for domestic and foreign limited liability partnerships. Section 1 of the bill establishes a new section of law that requires Kansas limited liability partnerships to have a registered office on file with the Secretary of State and to appoint a resident agent for the L.L.P. The section also governs changes in the appointment of the resident agent. Section 2 of the bill contains similar provisions, but is applicable to foreign limited liability partnerships. Foreign L.L.P.s are created in another state, but are doing business in Kansas.

Section 3 of the bill amends K.S.A. 17-6204, which requires resident agents for corporations. The bill adds a new subsection (d) to govern circumstances where both the resident agent and the registered office of the corporation are being changed simultaneously.

Sections 4 and 5 of the bill amend K.S.A. 56a-1001 and 56a-1102, respectively. These amendments require that the statement of qualification, which must be filed by an L.L.P. or foreign L.L.P., contain the registered office and resident agent information required by sections 1 and 2 of the bill.

TESTIMONY OF THE SECRETARY OF STATE  
ON SB 437  
DATE: 3/3/2010

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 437, a bill regarding resident agents for Limited Liability Partnerships and regarding a change of name and change of address form for resident agents that are on file with our office.

**Limited Liability Partnership Resident Agents:** We are recommending that both foreign and domestic Limited Liability Partnerships be required to maintain a resident agent for service of process. All other business entities that are required to file with our office are required by Kansas law to maintain a resident agent. Under KSA 56a-1001, and 56a-1102 there are requirements under the formation of a limited liability partnership to list the street address of the partnership's principal office, and if there is no office in this state then to give the name and street address of the partnership's agent for service of process. We recommend that the law is clarified to require that a resident agent must be appointed. The current Limited Liability Partnership law does not contain provisions for who can serve as a resident agent, who can change the address of the registered office, or what happens when a resident agent resigns, moves from the state or dies. This is, however, all set out in the current Limited Partnership law regarding resident agents. We would, therefore, recommend that the language regarding resident agents from the current Limited Partnership law be mirrored in the Limited Liability Partnership law. This change helps standardize Kansas formal filing requirements.

**Changes for name and address of a resident agent:** We recommend that a filing by a resident to change his/her name AND address be permitted on one document. Under current law, KSA 17-6204, a resident agent can file a certificate to change his/her name, or a certificate to change his/her address. We recommend clarifying the law to allow both changes to occur on one document. This would eliminate an extra, costly and cumbersome filing for the resident agent when both changes occur.

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

Sheri L. Smiley, Staff Attorney  
Kansas Secretary of State

House Judiciary  
Date 3-03-10  
Attachment # 2

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES  
JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR  
GORDON L. SELF, ATTORNEY  
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**Brief on Senate Bill 438**  
**Business Trust Filings**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 3, 2010

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SB 438 amends K.S.A. 17-2030, which governs filings business trusts must submit to the Secretary of State. Under current law a business trust, whether foreign or domestic, must file with the Secretary of State: (1) a copy of the document creating the trust; (2) a list of the names and addresses of the trustees; (3) a balance sheet of the trust; (4) the location of the registered office and the name of the resident agent; and (5) an irrevocable consent to service of process if the entity is a foreign business trust. Under SB 438 a business trust would no longer be required to file a balance sheet with the Secretary of State. All other requirements of the statute would stay the same.

TESTIMONY OF THE SECRETARY OF STATE  
ON SB 438  
DATE: 3/3/10

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 438, a bill regarding Business Trusts.

We are recommending that when a domestic or a foreign business trust files with this office they would no longer be required to file a balance sheet. The legislature eliminated the requirement to file balance sheets from the annual reports in 2005. No other business entity is required to submit a balance sheet at the time of formation. SB 438 removes balance sheets from these entities' formation document. It creates uniformity and consistency among formation documents, and is in line with Delaware law.

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

Sheri L. Smiley, Staff Attorney  
Kansas Secretary of State

House Judiciary  
Date 3-03-10  
Attachment # 4



MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES  
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**Brief on Senate Bill 439**  
**Amendments Regarding the Kansas Register**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 3, 2010

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SB 439 makes statutory amendments regarding the publication of the Kansas Register. Section 1 of the bill amends K.S.A. 75-430, which governs the contents of the Kansas Register. The bill combines the publication requirements concerning rules and regulations currently found in paragraphs (4), (5) and (6) into a single provision. There is also an added provision requiring that each issue of the Kansas Register contain a table of contents. Finally, there is an added provision requiring the Secretary of State to publish a cumulative index at least once a year.

Section 2 amends K.S.A. 75-431, which governs how material is submitted to the Secretary of State for publication. First, a new subsection (a) is added to require that state agencies designate a liaison to handle the submission of material for publication in the Kansas Register. Second, subsection (b) is amended to require that submissions be made in electronic format. Third, the Secretary of State will be required to keep submissions in their original form for six months. Currently, the Secretary of State is permitted to destroy original submissions as long as the Secretary has complied with this statute. Finally, there is a rearrangement of provisions pertaining to submissions of administrative rules and regulations. This is primarily for organizational purposes.

Finally, the bill repeals K.S.A. 75-432. The provisions of subsections (a), (b) and (d) of K.S.A. 75-432 are incorporated in the new language of sections 1 and 2.

**75-432. Same; table of contents; cumulative index; certification of documents; agencies to designate liaison; pages to be punched.** (a) Each issue of the register shall contain a table of contents.

(b) A cumulative index to all information required by this act to be published during the previous year shall be published at least once each year.

(c) Each document submitted to the secretary of state for publication as provided in this act must be certified by an official of the submitting agency authorized to certify documents of that agency.

(d) Each agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for publication.

(e) Each issue of the register shall be punched for standard three-ring binders.

TESTIMONY OF THE SECRETARY OF STATE

ON SB 439

March 3, 2010

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 439, a bill regarding the authorizing and prescribing requirements for publication of the Kansas Register. SB 439 proposes to amend K.S.A. 75-430, 75-431, and repeal 75-432.

The statutes authorizing and prescribing requirements for publication of the Kansas Register have become increasingly outdated since their inception in 1982. SB 439 proposes amending the Register-related statutes to better organize the subject matter and clean up and remove outdated and duplicative language.

K.S.A. 75-430:

- Section granting the secretary of state authority to publish a summary of adopted administrative regulations (e.g., length and cost of publication, technical subject, etc.), has been removed, as it is duplicative of another section in the same statute that gives the secretary of state the authority to omit from publication any information deemed "cumbersome, expensive, or otherwise inexpedient" and instead publish a notice/summary of such information and a manner in which it may be obtained.
- The section addressing distribution of the Register has been amended to clarify that **paper** copies shall be made available upon payment of a fee fixed by the secretary of state. The register is available electronically at no charge. Further requirements regarding fees for subscriptions and publication in the Register are found at KSA 75-433, which is referenced in this section.

K.S.A. 75-431:

- Removes the requirement that documents be submitted in duplicate and adds the requirement that materials filed for publication be submitted in an electronic format.
- Removes specific requirements for the filing of administrative rules and regulations, referring to provisions found Article 4, Chapter 77 (the Rules and Regulations Filing Act).

K.S.A. 75-432

- Sections concerning content and submission of materials for the Register have been incorporated into 75-430 and 75-431, respectively.
- The section requiring documents submitted for publication in the Register be certified by an official of the submitting agency has been removed. This requirement falls under the liaison officer's responsibilities, now contained in 75-431.
- The section concerning the designation of an agency liaison has been removed and incorporated into 75-431.
- The section requiring the Register be punched for standard three-ring binders has been removed.

Again, we appreciate the opportunity to share our suggestions today, and I am happy to stand for questions.

Sheri L. Smiley  
Staff Attorney  
Kansas Secretary of State

House Judiciary

Date 3-03-10

Attachment # 6