

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 4, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Pat Colloton- excused  
Representative Marvin Kleebl- 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:

Sheri L. Smiley

Others attending:

See attached list.

**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 Patton made a motion to move SCR 1615 from the table.

Representative Whitham seconded the motion.

Representative Whitham made a substitute motion to amend the bill, by striking all in lines 15 through 18 on page two and inserting the following:

"Be it further resolved: That all federal legislation which violates the Tenth Amendment by threatening civil or criminal penalties or sanctions or requiring states to pass legislation or lose federal funding be prohibited; and" (Attachment 1)

Representative Talia seconded the motion. Motion carried.

Representative Talia made a motion to amend the bill on page 2, lines 15 through 18 making the following deletions and additions:

"Strike "compulsory" and line 16 and line 17 up to the work "be" and insert "do not adhere to what the United States Supreme Court held in New York v. United States, McCulloch v. Maryland, and other relevant cases." (Attachment 2)

Representative Goyle seconded the motion. Motion fails.

Representative Patton moved to report SCR 1615 favorably for passage as amended. Motion carried.

The hearing on SB 440 - Repealing statutes on registration of insignias by secretary of state was opened.

Jason Long, from Office of Revisor of Statutes, provided an overview of the bill for the committee, explaining this bill repeals K.S.A. 75-421 through 75-427 which govern the registering of organization insignias with the Secretary of State. (Attachment 3)

Sheri L. Smiley, Staff Attorney, Kansas Secretary of State, appeared before the committee recommending that the law allowing insignias be repealed, as they are very seldom used by the public. She explained the law went into effect in 1953 and since that time their office has filed a total of 70 insignias, however, 35 of those have been filed by the same person, who is an incarcerated felon. She also stated Kansas does allow for servicemark and trademark filings under K.S.A. 81-202 *et seq.*, and an insignia could be filed as a servicemark or a trademark. There are strict remedies found in the trademark and servicemark statutes (K.S.A. 81-215) when a violation occurs. (Attachment 4)

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 4, 2010, in Room 346-S of the Capitol.

There were no opponents.

The hearing on **SB 440** was closed.

The hearing on **SB 441 - Business entity transactions act; limited partnership mergers** was opened.

Jason Long, from Office of Revisor of Statutes, provided an overview of the bill for the committee, explaining this bill amends the Business Transaction Act (Act), which was enacted in 2009 and is set to become effective July 1, 2010. The bill amends section 11 of the Act, which governs mergers between business entities. Under the Act as enacted last year, mergers between limited partnerships were excluded from the Act; this bill would repeal K.S.A. 56-1a609, which currently governs the merger of limited partnerships, and make the merger of limited partnerships subject to the provisions of the Act. (Attachment 5)

Sheri L. Smiley, Staff Attorney, Kansas Secretary of State, appeared before the committee in support of the bill. She explained that currently a Limited Partnership can merge or consolidate under K.S.A. 56-1a609, however, according to the statute they must file a "certificate of cancellation" with their office as set out in K.S.A. 56-1a153, and by filing a certificate of cancellation, in the record it would appear to the public that the Limited Partnership was dissolved or cancelled, not merged. She further stated one of the key distinctions is that there is a survivor in a merger but not in a cancellation and that all other business entities are required to file a Certificate of merger or an Agreement of Merger with their office.

Therefore, they support this bill that would repeal the current Limited Partnership Merger law, and it also repeals the section of the Act that would remove Limited Partnerships from the Act. This would require that Limited Partnerships file a Certificate of Merger or an Agreement of Merger, just as all other business entities do and it puts the public on notice that a merger has occurred rather than a cancellation. (Attachment 6)

There were no opponents.

The hearing on **SB 441** was closed.

**SB 438 - Business trusts; required filings with the secretary of state.**

Representative Brookens made the motion to report **SB 438** favorably for passage and be placed on the consent calendar.

Representative Goyle seconded the motion. Motion carried.

The next meeting is scheduled for March 8, 2010.

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

# JUDICIARY COMMITTEE GUEST LIST

DATE: 3/4/10

NAME	REPRESENTING
Sheri Smiley	Sec. of State
Jackie Carlson	Sec of State
CHRIS BORTZ	KDOT
Bruce Frazier	Western Energy
Diane Milner	Sec of State
Steven Anderson	Western Energy
Debbie Jones	Dept. of Admin
Patrick Vogelberg	Kearney and Associates
Sean Costello	Rep
Kath Walsz	Jud. Branch
JEN MILLER	CAPITOL STRATEGIES

Balloon for senate concurrent resolution 1615.

At page 2, lines 15-18 make the following deletions and additions.

Be it further resolved, That all ~~compulsory~~ federal legislation which violates the Tenth Amendment by threatening civil or criminal penalties or sanctions or requiring states to pass legislation or lose federal funding be prohibited ~~or repealed~~; and

Talia  
motion

Balloon for senate concurrent resolution 1615 – Talia

At page 2, lines 15-18 make the following deletions and additions.

Strike “compulsory” and line 16 and line 17 up to the word “be” and insert “do not adhere to what the United States Supreme Court held in New York v. United States, McCulloch v. Maryland, and other relevant cases.”

House Judiciary

Date 3-4-10

Attachment # 2

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

**Senate Bill 440**  
**Repeal of Requirement to Register Insignias**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 4, 2010

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SB 440 repeals K.S.A. 75-421 through 75-427. These statutes govern the registering of organization insignias with the Secretary of State. Copies of each of the statutes are attached to this memorandum. Briefly each statute provides the following:

K.S.A. 75-421 permits associations, orders, lodges, societies, unions, etc. to register their official insignia with the Secretary of State.

K.S.A. 75-422 requires that registration be on forms provided by the Secretary of State.

K.S.A. 75-423 requires that the Secretary of State keep an indexed record of all registered insignias.

K.S.A. 75-424 prohibits the registration of an insignia when it imitates, or so nearly resembles as to be calculated to deceive, any other insignia already registered, except that any insignia in peaceable use for at least 25 years prior to the effective date of the statute shall not be denied registration.

K.S.A. 75-425 requires the Secretary of State to issue a certificate of registration.

K.S.A. 75-426 requires a registration fee of \$5.00 be paid to the Secretary of State.

K.S.A. 75-427 provides that it is unlawful to wear a registered insignia unless entitled to do so by the registering organization. Violation of this statute is a misdemeanor.

**75-421. Names and insignia of certain organizations; registration.** Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, whether incorporated or unincorporated, may register in the office of the secretary of state. a facsimile, duplicate or description of its name, badge, button, decoration, charm, emblem, rosette or other insignia, and may by reregistration, alter or cancel the same.

**75-422. Same; application; effect of registration.** Application for such registration shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, upon blanks to be provided by the secretary of state, and such registration shall be for the use, benefit and on behalf of all associations, degrees, branches, subordinate lodges and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof and the individual members and those who thereafter become members thereof throughout the state of Kansas.



**75-423. Same; record.** The secretary of state shall keep a properly indexed record of the registrations provided for by this act, which record shall also show any altered or canceled registration.

**75-424. Same; exceptions.** No registration shall be granted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, having a name, badge, button, decoration, charm, emblem, rosette or other insignia similar to, imitating or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette or other insignia whatsoever, already registered pursuant to the provisions of this act: *Provided*, That nothing contained in this act shall deny the use of any emblem, name, badge, button, decoration, charm, rosette or other insignia to any organization which has been peaceably using the same for a period of twenty-five years or more prior to the date of this enactment.

**75-425. Same; certificate of registration.** Upon granting registration as aforesaid, the secretary of state shall issue his or her certificate to the petitioners, showing that a search of his or her records fails to disclose any conflict between the name, badge, button, decoration, charm, emblem, rosette or other insignia proposed to be registered, and any other name, badge, button, decoration, charm, emblem, rosette or other insignia registered pursuant thereto.

**75-426. Same; fee; disposition of moneys.** There shall be paid to the secretary of state for each registration made by the secretary and certificate thereof issued, pursuant to the provisions of this act, and for each search made by the secretary and certificate thereto issued, in pursuance of the provisions of this act, the sum of five dollars (\$5), which shall be paid at the time the registration or search is applied for; all sums paid to the secretary of state for registrations and searches in pursuance of the provisions of this act shall be paid into the general fund of this state and become a part of said fund.

**75-427. Same; penalty.** Any person who shall willfully wear, exhibit, display, or use for any purpose, the badge, button, decoration, charm, emblem, rosette or other insignia of any such association or organization herein mentioned, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and bylaws, rules and regulations of such association and organization, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section 21-1308 of the General Statutes of 1949 and any amendments thereto.

TESTIMONY OF THE SECRETARY OF STATE  
ON SB 440  
DATE: 3/4/10

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 440, a bill regarding insignias.

We are recommending that the law allowing insignias be repealed. We have found that insignias are seldom, if at all, being used by the public. The law went into effect in 1953. Since that time, our office has filed a total of 70 insignias. However, 35 of those have been filed by the same person, who is an incarcerated felon. In fact, we have not had an insignia filing from anyone other than this prisoner for the past 11 years. This causes us concern that perhaps the insignia is not being used in the way it was intended. We also did a survey of other states asking if they allow for insignia filings. Out of 17 that responded, only one other state allowed insignia filings. The other states would allow an insignia to be filed as a servicemark.

Kansas does allow for servicemark and trademark filings under KSA 81-202 *et seq.*, and an insignia could be filed as a servicemark or a trademark. There are strict remedies found in the trademark and servicemark statutes (see KSA 81-215) when a violation occurs.

SB 440 repeals the insignia law, however, it does not take away any options for consumers as they can file the insignia under current Kansas trademark and servicemark 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 3-4-10  
Attachment # 4

**MARY ANN TORRENCE**, ATTORNEY  
REVISOR OF STATUTES

**JAMES A. WILSON III**, ATTORNEY  
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**Brief on Senate Bill 441**  
**Merger of Limited Partnerships**

Jason B. Long  
Assistant Revisor  
Office of Revisor of Statutes

March 4, 2010

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SB 441 amends the Business Entity Transaction Act (Act), which was enacted in 2009 and is set to become effective July 1, 2010. The bill amends section 11 of the Act, which governs mergers between business entities. Under the Act as enacted last year mergers between limited partnerships were excluded from the Act. K.S.A. 56-1a609 currently governs the merger of limited partnerships. (A copy is attached to this memorandum.) The bill would repeal K.S.A. 56-1a609 and make the merger of limited partnerships subject to the provisions of the Act.

Under current law, when a limited partnership merges with another the limited partnership and does not survive the merger then the non-surviving limited partnership must file a certificate of cancellation with the Secretary of State. Also, if the surviving limited partnership is not a domestic entity then it must file a certificate with the Secretary of State stating that it may be served with process in Kansas.

Under the bill the merging limited partnerships would be required to meet all of the statutory requirements contained in sections 11 through 16 of the Act. This includes executing a merger agreement in accordance with the provisions of the Act, and filing a certificate of merger with the Secretary of State. There are also provisions governing the amendment of a merger agreement and when the merger becomes effective. (A copy of the relevant sections is attached to this memorandum.)

**56-1a609. Merger or consolidation; certificate of cancellation.** (a) Pursuant to an agreement, a domestic limited partnership may merge or consolidate with or into one or more limited partnerships formed under the laws of this state or any other state, with such limited partnership as the agreement shall provide being the surviving or resulting limited partnership.

(b) A domestic limited partnership that is not the surviving or resulting limited partnership in the merger or consolidation shall file a certificate of cancellation, which shall have an effective date not later than the effective date of the merger or consolidation.

(c) If following a merger or consolidation of one or more domestic limited partnerships and one or more limited partnerships formed under the laws of any state, the surviving or resulting limited partnership is not a domestic limited partnership, there shall be attached to the certificate of cancellation filed pursuant to K.S.A. 56-1a153 and amendments thereto for each such domestic limited partnership a certificate executed by the surviving or resulting limited partnership, stating that such surviving or resulting limited partnership may be served with process in the state of Kansas in any action, suit or proceeding for the enforcement of any obligation of such domestic limited partnership, irrevocably appointing the secretary of state as such surviving or resulting limited partnership's agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to such surviving or resulting limited partnership to the secretary of state.

(d) When the certificate of cancellation required by subsection (b) of section 20[\*] shall have become effective, for all purposes of the laws of the state of Kansas, all of the rights, privileges and powers of each of the limited partnerships that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of such limited partnerships, as well as all other things and causes of action belonging to each of such limited partnerships shall be vested in the surviving or resulting limited partnership, and shall thereafter be the property of the surviving or resulting limited partnership as they were of each of the limited partnerships that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of Kansas, in any such limited partnerships, shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of any of such limited partnerships shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited partnerships that have merged or consolidated shall thenceforth attach to the surviving or resulting limited partnership, and may be enforced against such surviving or resulting limited partnership to the same extent as if such debts, liabilities and duties had been incurred or contracted by such surviving or resulting limited partnership.



ganic rules of a domestic entity, approval of a transaction under this act by the unanimous vote or consent of its interest holders satisfies the requirements of this act for approval of the transaction.

New Sec. 9. (a) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted or exchanged unless:

(1) The organic law permits the organic rules to limit the availability of appraisal rights; and

(2) the organic rules provide such a limit.

(b) An interest holder of a domestic merging, acquired, converting or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this act to the extent provided:

(1) In the entity's organic rules;

(2) in the agreement; or

(3) in the case of a corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, the general corporate code applies to the extent practicable or as otherwise provided in the entity's organic rules or the agreement.

New Sec. 10. The following entities may not participate in a transaction under this act:

(a) Entities regulated under chapter 40 of the Kansas Statutes Annotated;

(b) banks and trust companies organized under chapter 9 of the Kansas Statutes Annotated;

(c) credit unions organized under K.S.A. 17-2201 et seq., and amendments thereto; and

(d) professional corporations formed under the Kansas professional corporation law or limited liability companies organized under the Kansas revised limited liability company act to render a professional service, as defined at K.S.A. 17-2707, and amendments thereto.

New Sec. 11. (a) Except as otherwise provided in this section, by complying with sections 11 through 16, and amendments thereto:

(1) One or more domestic entities may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic entity.

(b) Except as otherwise provided in this section, by complying with the provisions of sections 11 through 16, and amendments thereto, applicable to foreign entities a foreign entity may be a party to a merger under sections 11 through 16, and amendments thereto, or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of organization.

(c) Sections 11 through 16, and amendments thereto, do not apply to the following mergers:

(1) A merger between any two or more domestic corporations or one or more domestic corporations and one or more foreign corporations pursuant to K.S.A. 17-6701 et seq., and amendments thereto;

(2) a merger between any two or more domestic limited partnerships or one or more domestic limited partnerships and one or more foreign limited partnerships pursuant to K.S.A. 56-1a609, and amendments thereto;

(3) a merger between any two or more partnerships pursuant to K.S.A. 56a-905, and amendments thereto; or

(4) a merger between any two or more domestic limited liability companies or one or more domestic limited liability companies and one or more foreign limited liability companies pursuant to K.S.A. 17-7681, and amendments thereto.

New Sec. 12. (a) A domestic entity may become a party to a merger under sections 11 through 16, and amendments thereto, by approving an agreement of merger. The agreement shall be in a record and contain:

(1) As to each merging entity, its name, jurisdiction of organization and type;

(2) if the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of organization and type;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, rights to acquire interests or securities, cash or other property or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to its public organic document or to its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger, its proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of organization or the organic rules of a merging entity.

(b) An agreement of merger shall be signed on behalf of each merging entity.

(c) An agreement of merger may contain any other provision not prohibited by law.

New Sec. 13. (a) An agreement of merger is not effective unless it has been approved:

(1) By a domestic merging entity:

(A) In accordance with the requirements, if any, in its organic law and organic rules for approval of:

(i) In the case of an entity that is not a corporation, a merger; or

(ii) in the case of a corporation, a merger requiring approval by a vote of the interest holders of the corporation; or

(B) if neither its organic law nor organic rules provide for approval of a merger described in subparagraph (A), by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record, by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless, in the case of an entity that is not a corporation:

(A) The organic rules of the entity provide in a record for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders; and

(B) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) A merger involving a foreign merging entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

New Sec. 14. (a) An agreement of merger of a domestic merging entity may be amended:

(1) In the same manner as the agreement was approved, if the agreement does not provide for the manner in which it may be amended; or

(2) by the governors or interest holders of the entity in the manner provided in the agreement, but an interest holder that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the agreement that will change:

(A) The amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing, to be received by the interest holders of any party to the agreement;

(B) the public organic document or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the agreement, if the change would adversely affect the interest holder in any material respect.

(b) After an agreement of merger has been approved by a domestic merging entity and before a certificate of merger becomes effective, the agreement may be terminated:

(1) As provided in the agreement; or

(2) unless prohibited by the agreement, in the same manner as the agreement was approved.

(c) If an agreement of merger is terminated after a certificate of merger has been filed with the secretary of state and before the filing becomes effective, a certificate of termination, signed on behalf of a merging entity, shall be filed with the secretary of state before the time the certificate of merger becomes effective. The certificate of termination takes effect upon filing, and the merger is terminated and does not become effective. The certificate of termination shall contain:

- (1) The name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;
- (2) the date on which the certificate of merger was filed; and
- (3) a statement that the merger has been terminated in accordance with this section.

New Sec. 15. (a) A certificate of merger shall be signed on behalf of the surviving entity and filed with the secretary of state.

(b) A certificate of merger shall contain:

(1) The name, jurisdiction of organization and type of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of organization and type of the surviving entity;

(3) if the certificate of merger is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after the date of filing;

(4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with sections 11 through 16, and amendments thereto, and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;

(5) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the agreement of merger;

(6) if the surviving entity is created by the merger and is a domestic filing entity, its public organic document, as an attachment;

(7) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(8) if the surviving entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state pursuant to subsection (e) of section 16, and amendments thereto.

(c) In addition to the requirements of subsection (b), a certificate of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its name and any attached public organic document shall satisfy the requirements of the law of this state, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic document. If the surviving entity is a qualified foreign entity, its name shall satisfy the requirements of the law of this state.

(e) An agreement of merger that is signed on behalf of all of the merging entities and meets all of the requirements of subsection (b) may be filed with the secretary of state instead of a certificate of merger and upon filing has the same effect. If an agreement of merger is filed as provided in this subsection, references in this act to a certificate of merger refer to the agreement of merger filed under this subsection.

(f) A certificate of merger becomes effective upon the date and time of filing or the later date and time specified in the certificate of merger.

New Sec. 16. (a) When a merger becomes effective:

(1) The surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without assignment, reversion or impairment;

(4) all liabilities of each merging entity are liabilities of the surviving entity;

(5) except as otherwise provided by law other than this act or the agreement of merger, all of the rights, privileges, immunities, powers and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) All of its property continues to be vested in it without reversion or impairment;

- (B) it remains subject to all of its liabilities; and
- (C) all of its rights, privileges, immunities, powers and purposes continue to be vested in it;
- (7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;
- (8) if the surviving entity exists before the merger:
  - (A) its public organic document, if any, is amended as provided in the certificate of merger and is binding on its interest holders; and
  - (B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the agreement of merger and are binding on and enforceable by:
    - (i) Its interest holders; and
    - (ii) in the case of a surviving entity that is not a corporation, any other person that is a party to an agreement that is part of the surviving entity's private organic rules;
- (9) if the surviving entity is created by the merger:
  - (A) Its public organic document, if any, is effective and is binding on its interest holders; and
  - (B) its private organic rules are effective and are binding on and enforceable by:
    - (i) Its interest holders; and
    - (ii) in the case of a surviving entity that is not a corporation, any other person that was a party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules; and
- (10) the interests in each merging entity that are to be converted in the merger are converted and the interest holders of those interests are entitled only to the rights provided to them under the agreement of merger and to any appraisal rights they have under section 9, and amendments thereto, and the merging entity's organic law.
  - (b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor or third party would otherwise have upon a dissolution, liquidation or winding-up of the merging entity.
  - (c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.
  - (d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:
    - (1) the merger does not discharge any interest holder liability under the organic law of the domestic merging entity to the extent the interest holder liability arose before the merger became effective;
    - (2) the person does not have interest holder liability under the organic law of the domestic merging entity for any liability that arises after the merger becomes effective;
    - (3) the organic law of the domestic merging entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred and the surviving entity were the domestic merging entity; and
    - (4) the person has whatever rights of contribution from any other person as are provided by the organic law or organic rules of the domestic merging entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.
  - (e) When a merger becomes effective, a foreign entity that is the surviving entity:
    - (1) May be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and
    - (2) irrevocably appoints the secretary of state as its agent to accept service of process in any such suit or other proceeding. Service of process shall be made on the foreign entity pursuant to K.S.A. 60-304, and amendments thereto.
  - (f) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

TESTIMONY OF THE SECRETARY OF STATE  
ON SB 441  
DATE: 3/4/10

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 441, a bill regarding Limited Partnership Mergers.

We are recommending that when a limited partnership merges that they are required to file the same documents with our office as all other business entities that are a party to a merger. Currently a Limited Partnership can merge or consolidate under KSA 56-1a609. However, according to the statute they file a "certificate of cancellation" with our office as set out in KSA 56-1a153. Filing a certificate of cancellation in the record would make it appear to the public that the Limited Partnership has dissolved or cancelled, not merged. One of the key distinctions is that there is a survivor in a merger, but there is not a survivor in a cancellation. All other business entities are required to file a Certificate of Merger or an Agreement of Merger with our office.

We propose that the merger be permitted under the Business Entity Transaction Act, a law the legislature passed last session as Senate Bill 132 and goes into effect on July 1, 2010. The Business Entity Transactions Act is a comprehensive Act that allows for, among other things, business entity mergers. It requires that either a Certificate of Merger or the Agreement of Merger be filed with our office. The Business Entity Transactions Act currently has a provision in it stating that it does not apply to Limited Partnerships. We ask that this provision be repealed so that Limited Partnership Mergers are allowed under the Business Entity Transactions Act.

SB 441 repeals the current Limited Partnership Merger law, but it also repeals the section of the Business Entity Transaction Act that removes Limited Partnerships from the Act. By repealing the current Limited Partnership Merger law and a section of the Business Entity Transactions Act, Limited Partnerships would be able to merge under the Business Entity Transactions Act. This would require that Limited Partnerships file a Certificate of Merger or an Agreement of Merger, just as all other business entities do, and it puts the public on notice that a merger has occurred rather than a cancellation. This law change would allow the business record to accurately reflect the business transaction—a merger would be recorded as a merger.

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 3-4-10

Attachment # 6