

SESSION OF 2004

**REVISED**  
**CONFERENCE COMMITTEE REPORT BRIEF ON**  
**SENATE BILL NO. 29**

As Agreed to March 31,2004

**Brief\***

SB 29 would amend the Kansas General Corporation Code to bring it into substantial compliance with the General Corporation Law of Delaware, the laws upon which the Kansas Code has been based since 1939. The bill also expands the list of professions that may establish professional corporations and make a number of amendments to statutes dealing with other business entities such as business trusts, limited liability companies and limited partnerships.

The major amendments to the Kansas General Corporation Code are as follows:

- ! Use of electronic communication, electronic signatures, and tendering of documents and instruments "in writing or by electronic transmission" are authorized. The bill directs the Kansas Secretary of State to image paper documents filed by customers and return the paper document to the customer as a certified copy.
- ! Provision is made for corporate action through "any authorized officer" as opposed to specifically designated officers.
- ! Clarification is made in the description of acts to be taken or procedures to be followed based on actual corporate practices.
- ! Two new sections to Article 65 are added allowing: (a) the appointment of vote inspectors for stockholder meetings conducted by public and widely held corporations, and (b) consent by stockholders to the receipt of notice by electronic transmission.
- ! Mergers and consolidations are allowed with entities other than

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corporations.

- ! The term “facts” is defined as used throughout the Kansas corporate code.
- ! Revisions to the voting threshold requirements for nonstock (nonprofit) corporations are made and other clarifying amendments are made regarding the application of the present Kansas corporation laws to nonprofit corporations.
- ! Substantial revisions to KSA 17-6712 regarding stockholder appraisal rights are made.
- ! Additional changes mirroring those adopted in Delaware are adopted.
- ! The term “doing business” in Kansas regarding foreign corporations is defined.
- ! Annual report filing procedures are changed and the way agricultural land is reported is changed to require only the name of the county rather than the township, section, and range.
- ! The Secretary of State is authorized to set filing and copying fees as well as other service fees.
- ! The penalty for disobedience to a court order is increased from not to exceed the current limit of \$5,000 to \$25,000.

The bill amends statutes dealing with various business entities to do the following:

- ! **Filing Procedures.** The bill directs the Secretary of State to image the original paper document filed by the customer and to return the paper document to the customer as a certified copy.
- ! **Extensions.** The current statutory language allowing business trusts, limited liability companies, and limited partnerships to file an extension for filing the annual report is contained in the corporate code. The bill moves these provisions to their respective acts. The corporate code also contains a provision limiting public disclosure of the IRS tax extension filed with the

Secretary of State; this provision is likewise moved to the respective acts.

- ! **Business Trust Annual Reports.** The bill strikes provisions regarding the business trust annual report which requires detailed financial disclosure. Balance sheets were eliminated from all other entity annual reports in 1997.
- ! **Definition of "doing business" for Foreign Entities.** The definition of "doing business," which determines when a foreign entity must register with the Secretary of State, is amended to conform to the definition contained in Delaware law and the Kansas Revised Uniform Partnership Act.
- ! **Agricultural Information in Annual Reports.** This amendment strikes the requirement that limited partnerships include the section, range, and township when listing agricultural land on the annual report.
- ! **Third-Party Agent for Certificates of Good Standing.** Foreign entities that register with the Secretary of State must produce a certificate of good standing from the state of their organization. The amendment allows the Secretary of State's Office to accept certificates of good standing from a reliable third-party vendor approved by the Secretary of State who can provide the information in electronic format.

Finally, the bill expands the list of those professions that are authorized to form professional corporations to add licensed physician assistants and licensed occupation therapists to the current list of professional services. The bill authorizes the Board of Healing Arts by rule and regulation to limit the percentage of ownership when a licensed occupational therapists form a professional corporation in combination with other professional services.

### **Conference Committee Action**

The Conference Committee agreed to the House amendments to SB 29 and to add into SB 29 the provisions of SB 38 dealing with other business entity changes and SB 28 dealing with professional corporations.



## **Background**

SB 29 was recommended by the Kansas Bar Association (KBA) after a study by a special KBA study committee. The last major statutory revision of the Kansas General Corporation Code was adopted by the Legislature in 1988. The amendments were submitted to the 2002 Legislature and were incorporated in HB 3022 but there was insufficient time for the Legislature to act on the bill.

Proponents included the chairman of the special KBA study committee, a Topeka attorney, and a representative of the Kansas Secretary of State's Office.

SB 38 was supported by the Secretary of State's Office. The bill makes amendments to various business entity statutes to parallel changes proposed to the Kansas General Corporation Code in SB 29. The purpose is to create uniformity and consistency among all business entities that file with the Secretary of State.