

TESTIMONY OF THE SECRETARY OF STATE

ON SB 96

DATE: February 16, 2011

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 96, a bill regarding business entity filings. The bill has three parts:

1. Foreign Applications. We recommend that when a foreign entity files with us, they state on their application that they are in good standing in their home state on the date of filing, instead of submitting a certificate of good standing (CGS) from the home state.

Currently Kansas has a variety of requirements for the CGS from the home state: Corporations submit a CGS dated within 90 days of the foreign application date (K.S.A. 17-7301); LLCs and LPs submit a CGS but have no date requirement for that CGS (K.S.A. 17-76, 121 and 56-1a502(b), respectively); and LLPs are not required to submit a CGS (K.S.A. 56a-1102). Kansas law does not require a CGS with annual report filings or with most amendment filings. Throughout most of a company's existence in Kansas, the public ascertains a company's filing status in their home state by contacting the home state. We do not manage a foreign company's home state filing status in Kansas, and if we were informed of a change in their home state status, we have no authority under the law to address that or change their filing status here.

Removing the requirement for the CGS and adding the requirement for the statement would:

- * Create uniformity in the foreign application filing requirements for foreign entities.
- * Require the filer to state that the entity is in good standing **on the date** they file with Kansas. The broad date requirements or the lack of date or CGS requirements under current law do not provide the public with clear information about their home state status on the date of filing with Kansas. The statement on the foreign application is signed under penalty of perjury. The public always has the option to check with the home state to confirm that the entity is on file and in good standing in the home state.
- * Enable foreign entities to file online. Customers ask us every week when we will offer the foreign application filing online. We can build a complete filing online if the CGS is not required. The CGS requires a manual review; the foreign application can be programmed with thorough business rules that enable the filer to complete the filing online without additional review by the filing office.

2. Resident Agents. We recommend adding a statement to the formation document requirements for corporations, LLCs, LPs, LLPS that the filer notified the named resident agent, and that the resident agent accepted the appointment.

We have been surprised to hear from many resident agents who were never notified that they had been appointed. This law would provide some direction and education to make sure that this communication takes place. When this communication does not take place, and the unknowingly named resident agent does not wish to perform that duty, he or she must file a resignation and pay a fee to be removed from the company's record.

3. Reinstatements. We recommend that LLCs, LPs, and LLPs be permitted to reinstate after a loss of a resident agent as corporations are permitted to do. Under current law, if these entities forfeit for failure to appoint a resident agent after a resignation or death or other loss, they must form new companies—they cannot reinstate. These entities can reinstate after a failure to file an annual report. It seems the reinstatement provision in law should cover a failure to file a resident agent amendment if it also covers the failure to file an annual report—the resident agent filing and the annual report are both filings to update the public record.

We are requesting a delayed effective date for this bill, of July 1, 2012, so that we may program these changes in requirements in our filing system.

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

Stephanie Mickelsen, Deputy Assistant Secretary of State, Business Services
Kansas Secretary of State