

SESSION OF 2016

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2713**

As Amended by House Committee on Judiciary

**Brief\***

HB 2713 would amend the laws governing corporations, substantially.

The bill would amend and recodify the Kansas Business Combinations with Interested Shareholders Act, defining key terms and prohibiting corporations from engaging in any business combination with any interested stockholder for three years following the time such stockholder became an interested stockholder, except as described in the bill.

The bill also would add new sections to the Kansas General Corporation Code (the Code) as follows:

- Governing civil actions to interpret, apply, enforce, or determine the validity of certain corporate documents;
- Governing provisions in a corporation's bylaws concerning proxies;
- Defining "nonstock corporations" as any corporation organized under the Code that is not authorized to issue capital stock; explaining that generally the Code would apply to such corporations; listing which sections of the Code would not apply to nonstock corporations; defining "nonprofit nonstock corporations" as a nonstock corporation that does not have membership

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

interests; and explaining how the Code would apply to such corporations;

- Allowing bylaws to require all internal claims to be brought in Kansas courts and prohibiting bylaws from barring such claims from being brought in Kansas courts;
- Outlining the required contents of notice provided to persons having a claim against a corporation that has been dissolved; publication requirements; the date by which such claims must be brought when a claimant was given actual notice; requirements related to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events; requirements related to such claims; and how this new language would apply to nonstock corporations and nonstock nonprofit corporations; and
- Describing the process required to ratify one or more defective corporate acts and remedies available by persons substantially and adversely affected by such ratification.

Throughout the Code, the bill would update references to the Business Entity Standard Treatment (BEST) Act, which was enacted in 2014; add provisions specific to nonstock corporations in accordance with the new section discussed above; add language specific to uncertificated stock; and make other technical and non-substantive changes. Additionally the bill would:

- Amend the definition of “issuing public corporation”;
- Amend what provisions can be included in a corporation’s articles of incorporation;
- Specify who may act on behalf of an incorporator if he or she is unavailable;

- Prohibit bylaws from imposing liability for attorney fees or expenses of the corporation connected with an internal corporate claim on a stockholder;
- Amend provisions that could be included in emergency bylaws;
- Revise provisions governing a board of directors, including when a director's resignation is effective, election of directors, classes of directors, conferral of voting powers greater or lesser than other directors, and a director's consent to action that will be effective in the future;
- Amend provisions specifying who a corporation can indemnify and in what circumstances and governing advancement of expenses;
- Clarify language concerning certificates of designation;
- Allow the formula to determine consideration for capital stock to include or be dependent on ascertainable facts outside the formula;
- Prohibit the State from taxing stocks or bonds issued by a corporation organized under the Code owned by a nonresident or foreign corporation;
- Increase the time limit for asserting liability for unpaid consideration for shares from five to six years after the stock was issued or the date of the subscription upon which the assessment is sought;
- Strike language concerning the use of defenses available in enforcing a contract;
- In a statute stating Article 8 of the Uniform Commercial Code would govern the transfer of stock, specify that to the extent the Code is inconsistent with Article 8, the Code would control;

- Amend provisions governing stockholder meetings and the method to determine validity of electronic transmission of a stockholder's authorization for another to serve as proxy;
- Add language concerning the record date for determining which stockholders are entitled to notice and to vote at a stockholder meeting and access to the list of such stockholders;
- In a statute governing voting trust agreements and agreements to deposit capital stock of an original issue with or transfer capital stock to another, replace "filing" with "delivery" and specify the agreement could be delivered to a corporation's principal place of business rather than the corporation's registered office;
- Clarify the role of the district court in resolving issues concerning stockholder elections and votes, including whether a person has a right to vote at any meeting, and decrease the amount a court can penalize a corporation for disobedience of a court order from \$25,000 to \$5,000;
- Amend the law governing written consent of stockholders to take action without a meeting and require delivery of such consent to a corporation's registered office to be by certified or registered mail, return receipt requested;
- Revise provisions concerning when and in what manner a corporation can amend its articles of incorporation, requirements for stockholder consideration and approval of proposed amendments, and provisions allowing corporations to adopt a restated articles of incorporation to integrate all provisions then in effect, as well as further amend the articles;

- Amend the statutes governing merger and consolidation of:
  - Kansas corporations;
  - Kansas corporations with corporations of another state;
  - Two or more Kansas nonstock corporations;
  - A Kansas nonstock corporation with a nonstock corporation of another state;
  - One or more Kansas nonstock corporation with one or more Kansas stock corporation; and
  - One or more Kansas corporation, whether stock or nonstock and regardless of whether organized for profit, with one or more out-of-state corporation, whether stock or nonstock and regardless of whether organized for profit;
  
- Revise and add criteria for mergers of Kansas constituent corporations to occur without a vote of the stockholders of such corporation;
  
- Amend the statute governing merger of a Kansas corporation and an out-of-state corporation when 90 percent of the outstanding shares of each class of the stock of one corporation is owned by the other corporation to reference other statutes that would be applicable to such a merger;
  
- Revise provisions concerning appraisal rights;
  
- Specify that for the purposes of the sale, lease, or exchange of a corporation's property and assets, property and assets would include the property and assets of a subsidiary;
  
- Amend provisions governing dissolution, including the dissolution of nonstock and nonprofit

corporations, the role of the court in dissolution, the obligations of a dissolved corporation or successor entity, and the liability of stockholders upon dissolution;

- Add “trustee” alongside “receivers” in the sections of the law concerning insolvency of a corporation;
- Require creditors to make proof of their claims against a corporation within the time fixed and in accordance with the procedure established by the court, rather than within six months or within such other period of time as the court shall so order and direct;
- Allow creditors to appeal a claim that is disallowed within 30 days of receiving notice the claim has been disallowed rather than having the right to a hearing within 30 days;
- In the statute granting employees of the corporation to have a lien upon the assets thereof for the amount of the wages due to them, not to exceed two months’ wages, which are paid prior to any other debts of the corporation, amend the definition of “employee” to not include “officers” rather than “anyone owning or controlling a majority of the voting stock or voting power”;
- Amend the law governing “reorganization” of a corporation to refer to “bankruptcy”;
- Revise the law concerning the ability of stockholders to revoke the dissolution within three years of the dissolution;
- Amend provisions governing extension, renewal, and reinstatement of a corporation’s articles of incorporation;

- Strike a requirement that annual reports of business trusts, corporations, electric corporations, not-for-profit corporations, foreign corporations organized for profit, limited partnerships (LP), limited liability partnerships (LLP), limited liability corporations (LLC), and foreign LPs and LLPs be dated;
- Specify a business trust, domestic or foreign corporation, LP, LLP, LLC, or foreign LP or LLP whose annual report filing and fee is received by mail postmarked within 90 days from the date on which the report is due would forfeit its articles of incorporation or, where applicable, its authority to do business in Kansas;
- Require certificates of validation to be filed with the Secretary of State and set the cap on the fee for such a certificate at \$150;
- Add an exemption for banks, savings and loan associations, and savings banks to the requirements that the name of a corporation, LP, LLP, or LLC be distinguishable on the records of the Secretary of State from the name of other entities and contain one of a list of specified words;
- Require the address of a registered office, which must be included in an entity's organic documents or other document filed with the Secretary of State, to include the street, number, city, and postal code;
- Specify a domestic or foreign LLP could serve as a resident agent for a corporation, LP, LLP, or LLC;
- Strike a requirement that the Secretary of State issue a certified copy of a certificate provided by a resident agent listing all the entities it represents;
- Amend requirements for resident agents, when a new certificate must be filed due to a name

change, the procedure for a resident agent to resign; and

- Revise the requirements for a foreign entity to do business in the state of Kansas.

## **Background**

At the House Committee on Judiciary hearing on the bill, a representative of the Kansas Bar Association (KBA), which requested introduction of the bill, appeared as a proponent. The representative explained that the bill's amendments were proposed by a special committee created by the KBA's section on Corporation, Banking, and Business Law, which was composed of Kansas practitioners, academics, and a staff attorney from the Office of the Secretary of State. The amendments seek to align Kansas law with appropriate amendments adopted by Delaware since 2000, the last comprehensive update of the Kansas Code; make technical changes related to the adoption of the BEST Act; and enact changes proposed by the Office of the Secretary of State and the Office of the State Bank Commissioner. Representative Bruchman also spoke in support of the bill. A representative of the Kansas Banker's Association provided written testimony requesting support of amendments in the bill that restore a long-standing exemption for banks to require that the name of an entity be distinguishable from the name of other entities and contain one of a list of specified words, such as association, company, or corporation. The representative indicated the exception had been inadvertently omitted in previous legislation.

The House Committee adopted technical amendments offered by the Office of Revisor of Statutes.

The fiscal note prepared by the Division of the Budget indicates any costs resulting from passage could be handled within existing resources of the Office of the Secretary of State.