

## **Kansas General Corporations Code; Senate Sub. for HB 2112**

**Senate Sub. for HB 2112** substantially amends the laws governing corporations.

The bill amends and recodifies 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 adds new sections to the Kansas General Corporation Code (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 applies to such corporations; listing which sections of the Code do not apply to nonstock corporations; defining "nonprofit nonstock corporation" as a nonstock corporation that does not have membership interests; and explaining how the Code applies 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 applies 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 updates references to the Business Entity Standard Treatment (BEST) Act, which was enacted in 2014; adds provisions specific to nonstock corporations in accordance with the new section discussed above; adds language specific to uncertificated stock; and makes other technical and non-substantive changes.

Additionally the bill:

- Amends the definition of “issuing public corporation”;
- Amends what provisions can be included in a corporation’s articles of incorporation;
- Specifies who may act on behalf of an incorporator if he or she is unavailable;
- Prohibits bylaws from imposing liability for attorney fees or expenses of the corporation connected with an internal corporate claim on a stockholder;
- Amends provisions that could be included in emergency bylaws;
- Revises 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 that of other directors, and a director’s consent to action that will be effective in the future;
- Amends provisions specifying who a corporation can indemnify and in what circumstances and governing advancement of expenses;
- Clarifies language concerning certificates of designation;
- Allows the formula to determine consideration for capital stock to include or be dependent on ascertainable facts outside the formula;
- Prohibits the State from taxing stocks or bonds issued by a corporation organized under the Code owned by a nonresident or foreign corporation;
- Increases 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;
- Strikes language concerning the use of defenses available in enforcing a contract;
- In a statute stating Article 8 of the Uniform Commercial Code governs the transfer of stock, specifies that to the extent the Code is inconsistent with Article 8, the Code controls;
- Amends provisions governing stockholder meetings and the method to determine validity of electronic transmission of a stockholder’s authorization for another to serve as proxy;

- Adds 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, replaces “filing” with “delivery” and specifies the agreement could be delivered to a corporation’s principal place of business rather than the corporation’s registered office;
- Clarifies 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 decreases the amount a court can penalize a corporation for disobedience of a court order from \$25,000 to \$5,000;
- Amends the law governing written consent of stockholders to take action without a meeting and requires delivery of such consent to a corporation’s registered office to be by certified or registered mail, return receipt requested;
- Revises 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;
- Amends 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;
- Revises and adds criteria for mergers of Kansas constituent corporations to occur without a vote of the stockholders of such corporation;
- Updates service of process provisions applicable to mergers or consolidations of stock corporations and nonstock corporations to permit process to be served by electronic transmission, but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue rules and regulations on this topic.

- Amends 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 applicable to such a merger;
- Revises provisions concerning appraisal rights;
- Specifies that for purposes of the sale, lease, or exchange of a corporation's property and assets, property and assets include the property and assets of a subsidiary;
- Amends 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;
- Adds "trustee" alongside "receivers" in the sections of the law concerning insolvency of a corporation;
- Requires 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;
- Allows 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 wages due to them, not to exceed two months' wages, which are paid prior to any other debts of the corporation, amends the definition of "employee" to not include "officers" rather than "anyone owning or controlling a majority of the voting stock or voting power";
- Amends the law governing "reorganization" of a corporation to refer to "bankruptcy";
- Revises the law concerning the ability of stockholders to revoke the dissolution within three years of the dissolution;
- Amends provisions governing extension, renewal, and reinstatement of a corporation's articles of incorporation;
- Strikes 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 companies (LLC), and foreign LPs and LLPs be dated;

- Specifies 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 forfeits its articles of incorporation or, where applicable, its authority to do business in Kansas;
- Requires certificates of validation to be filed with the Secretary of State and sets the cap on the fee for such a certificate at \$150;
- Adds 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;
- Requires 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;
- Specifies a domestic or foreign LLP could serve as a resident agent for a corporation, LP, LLP, or LLC;
- Strikes 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;
- When a new certificate must be filed due to a name change, amends the procedure for a resident agent to resign; and
- Revises the requirements for a foreign entity to do business in the state of Kansas.