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STATE OF KANSAS

Testimony: HB2391 (proponent)

Senate Committee on Transparency & Ethics
Wednesday, March 17, 2021

Chairwoman Bowers and members of the Committee:

HB2391 clarifies, updates, and eliminates several statutes concerning the responsibilities of the business division in the Office of Secretary of State. In short, the bill clarifies definition of street address, clarifies professional association abbreviations, repeals three statutes from 1939 regarding blanket music licenses, allows for the acceptance of electronic signatures, addresses UCC filings with a social security number and would allow for bi-annual business filings starting January 1, 2023.

The bill repeals three laws dating back to 1939 regarding blanket music licenses. Blanket music licenses, most commonly, allow businesses to pay a set fee to a national organization (BMI and ASCAP are the primary ones) and then play the background music you hear while dining or strolling through a store. Kansas is the only state that still requires these national organizations to annually file copies of every license issued to a state business. Neither the national organizations nor the businesses who pay for the licenses could articulate the reason for still filing these licenses. The paper licenses filed with our office are about 12 inches high and no one at the Secretary of State's office could recall anyone asking to see any of the filed licenses in over a decade.

The bill would permit business entities to file a business entity information report with the Secretary of State on a biennial basis beginning January 1, 2023. This provision was introduced last session as SB251 by Senator Olson who graciously worked with our office to ensure the legislation remained small business friendly but also revenue neutral as we are a fee funded agency. Currently, business entities are required to file their annual report on a yearly basis. Under the bill, a business incorporated in an even number year will file their biennial report in an even numbered year, and those incorporated in an odd numbered year will file their biennial report in an odd numbered year.

The bill also updates the reinstatement process to make it easier for Kansas businesses and nonprofits to reinstate. Under current law, businesses must file all past due annual reports and pay fees for each of those reports and nonprofits must pay all fees and file the three most recent annual reports. HB2391 sets a maximum requirement of up to five biennial reports and the requisite fees to reinstate a business, and the most recent report and fees for a nonprofit, in Kansas. Based on figures from 2015 to 2019, this provision would capture approximately 98 percent of business reinstatements in Kansas.

Approximately 3,000 to 4,000 reinstatements are filed by paper each year. The updates contained in HB2391 for business and nonprofit reinstatements will allow our office to move reinstatements to our new online filing system because of the simplified process for calculating reinstatement fees and make it easier for Kansas businesses to file their reports.

As previously mentioned, HB2391 would go into effect January 1, 2023. The reasoning for this delayed effective date is to allow ample time to communicate the changes to Kansas businesses and nonprofits. The date will also ensure our office has completed migration off the current, antiquated AS400 system and onto a new and more secure filing system.

Finally, the bill also amends state law to provide that information (such as a social security number) improperly placed on a Uniform Commercial Code (UCC) form by the person filing the form, including placing it in a description, or including it as an attachment, is exempt from the requirement to remove the information. This occurs when a filer intentionally submits a UCC form containing this information. The form does not require this information, there is no place for it to be provided on the form, and the instructions clearly warn filers not to include this information.

The House Commerce, Labor & Economic Development Committee amended the bill, with support from the Secretary of State, to allow individuals with multiple LLCs to file their biannual reports together, regardless of the year of incorporation starting January 1, 2023.

Our office respectfully asks that you consider including the attached technical amendment. Due to a drafting oversight on our end, we failed to include all classifications of business entities in the reinstatement provisions of the bill. This amendment would fix that oversight and ensure all businesses can use the updated reinstatement process outlined in HB2391.

Again, the intent of our office in introducing this legislation was to update, clarify, and streamline several statutes related to our business services unit. The bill has the added benefit of reducing the burden on Kansas businesses and nonprofit organizations while providing for better efficiencies in the Secretary of State's office.

We respectfully request your support of HB2391.

Respectfully submitted,

Clay Barker
Deputy Assistant Secretary of State
Assistant General Counsel

Attachment

HB2391 BALLOON AMENDMENT

Bill Sec 12(g) Page 12, K.S.A. 2020 Supp. 17-7002 (Corporation reinstatement)

- Current Bill Language: Any corporation that renews or reinstates its articles of incorporation or authority to engage in business under this code shall file all ~~annual~~ business entity information reports for up to the five most recent reporting periods and pay to the secretary of state an amount equal to all fees and any penalties thereon due.
- New Language: Any corporation that renews or reinstates its articles of incorporation or authority to engage in business under this code shall file all ~~annual~~ business entity information reports for up to the five most recent biennial reporting periods or ten most recent annual report periods and pay to the secretary of state an amount equal to all fees and any penalties thereon due.

Add to Bill: KSA 17-76,146: (Reinstatement of Foreign and Domestic LLC)

- Current Statute: may be reinstated by filing with the secretary of state a certificate of reinstatement accompanied by the payment of the fee required by K.S.A. 17-76,136(d), and amendments thereto, and payment of the annual report fees due under K.S.A. 17-76,139(c), and amendments thereto, and all penalties and interest thereon due at the time of the cancellation or forfeiture of its articles of organization or authority to do business.
- New Language: may be reinstated by filing with the secretary of state a certificate of reinstatement accompanied by the payment of the fee required by K.S.A. 17-76,136(d), and amendments thereto, and payment of the annual report fees due under K.S.A. 17-76,139(c), and amendments thereto, for up to the five most recent biennial reporting periods or ten most recent annual report periods, and pay to the secretary of state an amount equal to all fees and any penalties thereon due.

Bill Sec 23(a) Page 24: KSA 17-76,147: (Reinstatement of Series LLC)

- Current Bill Language: may be reinstated by filing in the office of the secretary of state a certificate of reinstatement accompanied by the payment of the fee required by K.S.A. 17-76,136(d), and amendments thereto, and payment of the annual business entity information report fee due under K.S.A. 17-76,139(c), and amendments thereto, and all penalties and interest thereon due at the time of the cancellation of its certificate of designation.
- New Language: may be reinstated by filing with the secretary of state a certificate of reinstatement accompanied by the payment of the fee required by K.S.A. 17-76,136(d), and amendments thereto, and payment of the annual report fees due under K.S.A. 17-76,139(c), and amendments thereto, for up to the five most recent biennial reporting periods or ten most recent annual report periods, and pay to the secretary of state an amount equal to all fees and any penalties thereon due.

Bill Sec 36(g) Page 41: KSA 56-1a606: (Reinstatement of Domestic LP)

- Current Bill Language: the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees, including any penalties thereon, due to the state.
- New Language: the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and all business entity information reports for up to the five most recent biennial reporting periods or ten most recent annual report periods, and pay to the secretary of state an amount equal to all fees and any penalties thereon due.

Bill Sec 37(g) Page 41: KSA 56-1a607: (Reinstatement of Foreign LP)

- Current Bill Language: the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees, including any penalties thereon, due to the state.
- New Language: the limited partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state, all business entity information reports for up to

the five most recent biennial reporting periods or ten most recent annual report periods, and pay to the secretary of state an amount equal to all fees and any penalties thereon due

Bill Sec 40(f) Page 45: KSA 56a-1201: (Reinstatement of Domestic LLP)

- Current Bill Language: the limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees, including any penalties thereon, due to the state.
- New Language: the limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state, all business entity information reports for up to the five most recent biennial reporting periods or ten most recent annual report periods, and pay to the secretary of state an amount equal to all fees and any penalties thereon due.

Bill Sec 41(f) Page 47: KSA 56a-1202: (Reinstatement of Foreign LLP)

- Current Bill Language: the foreign limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees, including any penalties thereon, due to the state.
- New Language: the foreign limited liability partnership may be reinstated by filing a certificate of reinstatement, in the manner and form to be prescribed by the secretary of state, all business entity information reports for up to the five most recent biennial reporting periods or ten most recent annual report periods, and pay to the secretary of state an amount equal to all fees and any penalties thereon due.

Note: Leave Unchanged: Bill Sec 22(g) Page 23: KSA 17-76,139