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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 14, 2023
Subject: Bill Brief for HB 2455

House Bill 2245 updates the Kansas general corporation code, the business entity transactions act, the business entity standard treatment act, the Kansas revised uniform limited partnership act and the Kansas uniform partnership act.

Use of electronic transmissions and electronic signatures with certain exceptions

Section 1 adds a new section of law that will be supplemental to article 60 of chapter 17 of the Kansas Statutes Annotated, part of the Kansas general corporation code concerning formation of corporations. Subsection (a) provides that: (1) An act or transaction may be provided for in a document, including an electronic transmission; (2) a signature may be a manual, facsimile, conformed or electronic signature; and (3) an electronic transmission shall be deemed delivered to a person when such electronic transmission enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered if the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. Subsection (b) provides that subsection (a) shall not apply to: (1) A document filed with or submitted to the secretary of state, the clerk of a district court or a court or other judicial or governmental body of this state; (2) a document comprising part of the stock ledger; (3) a certificate representing a security; (4) a document referenced as a notice, or waiver of notice and that expressly provides the manner of signing or delivery; (5) a ballot to vote on actions at a meeting of stockholders; and (6) an act or transaction effected pursuant to K.S.A. 2022 Supp. 17-6808a, article 71 or 73 of chapter 17 of the Kansas Statutes Annotated, or the business entity standards treatment act.

Several sections of the bill amend current law to authorize certain actions in accordance with Section 1, unless otherwise restricted: Section 8, K.S.A. 17-6008, a consent may be documented, signed and delivered, related to action permitted to be taken at the organization meeting of the incorporators or directors that may be taken without a meeting; Section 12, K.S.A. 17-6301, a consent may be documented, signed and delivered, related to action required or permitted to be taken at any meeting of the board of directors that may be taken without a meeting; Section 21, K.S.A. 17-6502, a stockholder authorization of another person to act as a proxy may be documented, signed and delivered; and Section 26, K.S.A. 17-6518, a consent may be documented, signed and delivered, related to action required or permitted to be taken at any annual or special meeting of stockholders of a corporation or at a meeting of the members of a nonstock corporation that may be taken without a meeting.

Several sections contain amendments to terms related to electronic transmission, such as changing “mailed” or “sent” to “given” or striking the word “written”: Section 14, K.S.A. 17-6401; Section 17, K.S.A. 17-6413; Section 18, K.S.A. 17-6426; Section 24, K.S.A. 17-6512; Section 38, K.S.A. 17-6804; and Section 43, K.S.A. 17-72a04.

Section 28 amends K.S.A. 17-6522 to provide that any notice to stockholders given by the corporation under any provision of this code or the articles of incorporation or bylaws may be given in writing directed to the stockholder’s postal address, or by electronic transmission directed to the stockholder’s electronic mail address unless the stockholder has notified the corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by subsection (e). That subsection provides that a notice shall not be given by an electronic transmission from and after the time that the corporation is unable to deliver by such electronic transmission two consecutive notices given by the corporation and such inability becomes known to a person responsible for the giving of notice.

Business entity information reports

Several sections of the bill amend current law to provide that written business entity information reports filed with the secretary of state shall contain the location of the principal office, including the building and suite number, street name or rural route number with box number, city, state and zip code: Section 2, K.S.A. 17-2036, business trust; Section 3, K.S.A. 17-2718, professional corporation; Section 4, K.S.A. 17-4634, corporation organized under the electric cooperative act; Section 5, K.S.A. 17-4677, cooperative organized under the renewable energy electric generation cooperative act; Section 47, K.S.A. 17-7503, domestic corporation organized

for profit; Section 48, K.S.A. 17-7504, corporation organized not for profit; Section 49, K.S.A. 17-7505, foreign corporation organized for profit; Section 52, K.S.A. 17-76,139, limited liability company and series thereof; Section 66, K.S.A. 56-1a606, limited partnership; Section 67, K.S.A. 56-1a607, foreign limited partnership; Section 69, K.S.A. 56a-1201, limited liability partnership; and Section 70, K.S.A. 56a-1202, foreign limited liability partnership.

Similarly, Section 72 amends K.S.A. 17-7924 to provide that the postal address of a registered office under the business entity standard treatment act includes the building and suite number, street name or rural route number with box number, city, state and zip code.

Procedures and requirements related to emergency bylaws and actions under emergency conditions

Section 9 amends K.S.A. 17-6010 to add that the emergency bylaws contemplated by current law in this section may be adopted by the board of directors or, if a quorum cannot be readily convened for a meeting, by a majority of the directors present. New subsection (i) provides that during an emergency described in this section, the board of directors or, if a quorum cannot be readily convened for a meeting, a majority of the directors present may: (1) Take any action that the board determines to be practical and necessary to address the circumstances of such emergency condition with respect to a meeting of stockholders of the corporation; and (2) with respect to any dividend that has been declared as to which the record date has not occurred, change each of the record date and payment date to a later date or dates, if the changed payment date is not more than 60 days after the record date as changed.

Merger or consolidation

The bill makes several amendments to provisions in article 67 of chapter 17 related to merger or consolidation of corporations: Section 29, K.S.A. 17-6701, domestic corporations; Section 30, K.S.A. 17-6702, domestic and foreign corporations; Section 31, K.S.A. 17-6703, merger of parent corporation and subsidiary corporation or corporations; Section 32, K.S.A. 17-6705, domestic nonstock corporations; Section 33, K.S.A. 17-6706, domestic and foreign nonstock corporations; Section 34, K.S.A. 17-6707, domestic stock and nonstock corporations; and Section 35, K.S.A. 17-6708, domestic and foreign stock and nonstock corporations.

Section 36 amends K.S.A. 17-6712, the statute concerning appraisal rights for the shares of any class or series of stock of a constituent corporation in a merger or consolidation. In addition to amendments in this section to address electronic transmission, certain provisions are made applicable only to certain time periods. Subsection (b)(4) is amended to apply only with respect to

a merger or consolidation consummated pursuant to an agreement entered into or resolutions of the board of directors adopted, as applicable, before July 1, 2023. New subsections (g)(2) and (h)(2) apply only with respect to transactions consummated on or after July 1, 2023. Section 37 further amends K.S.A. 17-6712, as amended by Section 36, on January 1, 2024, to remove subsection (b)(4).

Section 46 amends K.S.A. 17-7302 concerning a provision that a foreign corporation admitted to do business in this state that is a party to a merger or consolidation with any other foreign corporation shall file a certificate with the secretary of state or a form prescribed by the secretary of state.

The bill amends several statutes related to merger in the business entity transactions act: Section 53, K.S.A. 17-78-102; Section 54, K.S.A. 17-78-202; Section 55, K.S.A. 17-78-203; Section 56, K.S.A. 17-78-205; Section 57, K.S.A. 17-78-302; and Section 58, K.S.A. 17-78-606.

Dissolution and revocation or restoration of revoked or forfeited articles of incorporation or authority to engage in business and revival

Section 39 amends K.S.A. 17-6812 to clarify that upon motion by the attorney general, the district court has jurisdiction to revoke or forfeit the articles of incorporation of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises.

Section 40 amends K.S.A. 17-7001 concerning the procedure for revocation of a voluntary dissolution or the restoration of a corporation. Section 41 amends K.S.A. 17-7002 concerning the procedure for revival of a corporation's articles of incorporation or authority to engage in business after becoming forfeited or void. Section 42 amends K.S.A. 17-7003 to provide that a corporation may renew, restore, revive, extend and continue its corporate existence upon complying with article 70 of chapter 17 of the Kansas Statutes Annotated.

Secretary of state

Section 51 amends K.S.A. 17-76,136, relating to domestic and foreign limited liability company fees, to eliminate the current fee per page charged by the secretary of state for certified copies and photocopies of instruments that are not certified. The amendments provide that the current law fee of \$7.50 for each certified copy will be charged regardless of whether the secretary of state supplies the copy and a flat fee of \$20 will be charged for a copy of an instrument on file or prepared by the secretary of state's office, whether or not the copy is certified. Section 65 makes the same amendment in K.S.A. 56-1a605 related to domestic and foreign limited partnership fees.

Section 59 amends K.S.A. 17-7914 to allow documents required to be filed with the secretary of state by the business entity standard treatment act to be filed by electronic communication. Further amendments to the business entity standard treatment act are in: Section 60, K.S.A. 17-7918; Section 61, K.S.A. 17-7919; Section 62, K.S.A. 17-7924; Section 63, K.S.A. 17-7929; and Section 64, K.S.A. 17-7933.

Section 68 amends K.S.A. 56a-105 to allow statements filed with the secretary of state pursuant to the Kansas uniform partnership act to be filed by electronic communication.

Also repealing

In addition to the amendments discussed above, the bill repeals: K.S.A. 17-72a03 (January 1, 2024), public benefit corporation amendments and mergers; K.S.A. 17-7511, inspection of corporation's income tax return to verify business entity information report; K.S.A. 17-7514, copies of applications for extension of time for filing income tax returns submitted to secretary of state; K.S.A. 56-1a608, Kansas revised uniform limited partnership act, first annual report and annual report fee; K.S.A. 56-1a610, Kansas revised uniform limited partnership act, applications for extension of time for filing income tax returns submitted to secretary of state; K.S.A. 56a-1203, Kansas uniform partnership act, limited liability partnerships and foreign limited liability partnerships annual report and payment of annual report fee; and K.S.A. 56a-1204, Kansas uniform partnership act, applications for extension of time for filing income tax returns submitted to secretary of state.