

## SENATE BILL No. 424

By Committee on Ways and Means

1-23

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9 AN ACT concerning commerce; implementing the business ownership  
10 registration act.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in this act, the following words and phrases shall  
14 have the following meanings unless a different meaning clearly appears  
15 from the content:

16 (a) "Business ownership name" means: (1) in the case of an individ-  
17 ual, a name of the business that does not include the surname of the  
18 individual or a name that suggests the existence of additional owners;

19 (2) in the case of a partnership or other association of persons, other  
20 than a limited partnership that has filed a certificate of limited partnership  
21 with the secretary of state pursuant to K.S.A. 56-1a151, and amendments  
22 thereto, a foreign limited partnership that has registered with the secre-  
23 tary of state pursuant to K.S.A. 56-1a502, and amendments thereto, a  
24 name that does not include the surname of each general partner or a  
25 name that suggests the existence of additional owners;

26 (3) in the case of a corporation, any name other than the corporate  
27 name stated in its articles of incorporation;

28 (4) in the case of a limited partnership that has filed a certificate of  
29 limited partnership with the secretary of state pursuant to K.S.A. 56-  
30 1a151, and amendments thereto, and in the case of a foreign limited  
31 partnership that has filed an application for registration with the secretary  
32 of state pursuant to K.S.A. 56-1a502, and amendments thereto, any name  
33 other than the name of the limited partnership as on file with the secretary  
34 of state;

35 (5) in the case of a limited liability company, any name other than  
36 the name stated in its articles of organization and in the case of a foreign  
37 limited liability company that has filed an application for registration with  
38 the secretary of state pursuant to K.S.A. 17-76,123, and amendments  
39 thereto, any name other than the name of the limited liability company  
40 as on file with the secretary of state; or

41 (6) a name that suggests the existence of additional owners within the  
42 meaning of subsection (a) is one which includes such words as "Com-  
43 pany," "& Company," "& Son," "& Sons," "& Associates," "Brothers,"

1 and similar phrases, but not words that merely describe the business being  
2 conducted.

3 (b) "General partner" means: (1) In the case of a partnership, a gen-  
4 eral partner; or

5 (2) in the case of an unincorporated association other than a part-  
6 nership, a person interested in such business whose liability with respect  
7 to the business is substantially the same as that of a general partner.

8 (c) "Manager" means a manager of a limited liability company.

9 (d) "Person" includes individuals, limited liability companies, part-  
10 nerships and other associations and corporations.

11 (e) "Registrant" means a person who is filing or has filed a business  
12 name statement.

13 Sec. 2. Every person who regularly transacts business in this state for  
14 profit under a business name shall:

15 (a) File a business ownership name statement in accordance with this  
16 act not later than 40 days from the time the business transactions com-  
17 mence for the purpose of registering all owners of such business; and

18 (b) file a new statement in accordance with this chapter on or before  
19 the date of expiration of the statement on file, except that filing a state-  
20 ment pursuant to a similar city ordinance or county resolution shall fulfill  
21 the requirements of this section.

22 Sec. 3. (a) No person shall adopt any business name which includes  
23 "Corporation," "Corp.," "Incorporated," or "Inc." unless that person is a  
24 corporation organized pursuant to the laws of this state or some other  
25 jurisdiction.

26 (b) No person shall adopt any business name that includes "Limited  
27 Liability Company" or "LLC" or "LC" unless that person is a limited  
28 liability company organized pursuant to the laws of this state or some  
29 other jurisdiction. A person is not prohibited from using the complete  
30 words "Limited" or "Company" or their abbreviations in the person's  
31 business name as long as that use does not imply that the person is a  
32 limited liability company.

33 (c) A county clerk shall not accept a business name statement which  
34 would be in violation of this section.

35 Sec. 4. This act does not apply to a nonprofit corporation or associ-  
36 ation, including, but not limited to, organizations such as churches, labor  
37 unions, fraternal and charitable organizations, nonprofit hospitals, and  
38 similar organizations.

39 Sec. 5. This act does not apply to a real estate investment trust that  
40 has qualified to do business under K.S.A. 40-2a18 and 40-2b18, and  
41 amendments thereto.

42 Sec. 6. (a) The business ownership name statement shall contain the  
43 following information set forth in the manner determined by the secretary

1 of state:

2 (1) The business ownership name or names. Only those businesses  
3 operated at the same address may be listed on one statement.

4 (2) If the registrant has a place of business in this state, insert the  
5 street address of such registrant's principal place of business in this state.  
6 If the registrant has no place of business in this state, insert the street  
7 address of such registrant's principal place of business outside this state.

8 (3) If the registrant is an individual, insert the registrant's full name  
9 and residence address. If the registrant is a partnership or other associ-  
10 ation of persons, insert the full name and residence address of each gen-  
11 eral partner. If the registrant is a limited liability company, insert the  
12 name of the limited liability company as set out in its articles of organi-  
13 zation and the state of organization. If the registrant is a business trust,  
14 insert the full name and address of each trustee. If the registrant is a  
15 corporation, insert the name of the corporation as set out in its articles  
16 of incorporation and the state of incorporation.

17 (4) Whichever of the following best describes the nature of the busi-  
18 ness: (A) An individual; (B) a general partnership; (C) a limited partner-  
19 ship; (D) a limited liability company; (E) an unincorporated association  
20 other than a partnership; (F) a corporation; (G) a business trust; (H)  
21 copartners; (I) husband and wife; (J) joint venture; or (K) other--please  
22 specify.

23 (5) The date on which the registrant first commenced to transact  
24 business under the business ownership name or names listed, if already  
25 transacting business under that name or names. If the registrant has not  
26 yet commenced to transact business under the business name or names  
27 listed, insert the statement, "Not applicable."

28 (b) The registrant shall declare that all of the information in the state-  
29 ment is true and correct. A registrant who declares as true any material  
30 matter pursuant to this section which the registrant knows to be false is  
31 guilty of a misdemeanor.

32 Sec. 7. If the registrant is an individual, the statement shall be signed  
33 by the individual; if a partnership or other association of persons, by a  
34 general partner; if a limited liability company, by a manager or officer; if  
35 a business trust, by a trustee; if a corporation, by an officer.

36 Sec. 8. The business ownership name statement shall be filed with  
37 the clerk of the county in which the registrant has the principal place of  
38 business in this state or, if the registrant has no place of business in this  
39 state, with the clerk of Shawnee county.

40 Sec. 9. Presentation for filing of a business ownership name state-  
41 ment and one copy, tender of the filing fee and acceptance of the state-  
42 ment by the county clerk constitute filing under this act. A municipal  
43 ordinance or county resolution requiring a similar filing procedure shall

1 fulfill the requirements of this section. The county clerk shall note on the  
2 copy the file number, the date of filing the original and the date of ex-  
3 piration and shall certify and deliver or send the copy to the registrant.

4 Sec. 10. No person transacting business under a business ownership  
5 name contrary to the provisions of this act, or an assignee, may maintain  
6 any action upon or on account of any contract made, or transaction had,  
7 in the business ownership name in any court of this state until the business  
8 ownership name statement has been executed, filed and published as  
9 required by this act.

10 Sec. 11. (a) A business ownership name statement may be executed  
11 and filed by the trustee in bankruptcy at any time after bankruptcy where  
12 a failure to comply with the provisions of this act would otherwise pre-  
13 clude the maintenance of an action to recover any sums due to the bank-  
14 rupt or the partnership of which the bankrupt was a member.

15 (b) A business ownership name statement may be executed and filed  
16 by the conservator, executor or administrator at any time after the ap-  
17 pointment of a conservator for or death of any individual or partner where  
18 a failure to comply with the provisions of this act would otherwise pre-  
19 clude the maintenance of an action to recover any sums due the conser-  
20 vatee or deceased person or the partnership of which the filer was a  
21 member.

22 (c) A business ownership name statement may be executed and filed  
23 by an assignee or purchaser of the business at any time after the assign-  
24 ment or sale where a failure to comply with the provisions of this act  
25 would otherwise preclude the maintenance of an action to recover any  
26 sums due to the assignee or purchaser by reason of the assignment or  
27 sale.

28 (d) The business ownership name statement referred to in this sec-  
29 tion shall be in substantially the same form as prescribed in section 6,  
30 and amendments thereto, except:

31 (1) The person or persons who were doing business under the busi-  
32 ness name shall be stated as such person or persons existed (A) imme-  
33 diately prior to the bankruptcy, conservatorship or death or the assign-  
34 ment or sale of the business or (B) at the time they ceased to do business  
35 under the business name, whichever is the earlier time.

36 (2) The statement shall include the following additional sentence:  
37 "This statement has been executed pursuant to Section 11 of the Business  
38 Ownership Registration Act."

39 (3) The person executing the statement shall (A) sign the statement  
40 on behalf of the person or persons formerly doing business under the  
41 business ownership name, (B) state the registrant's full name and the  
42 street address of the place of business or, if the registrant has none, of  
43 the registrant's residence, and (C) indicate whether registrant is a trustee

1 in bankruptcy, conservator, executor or administrator or assignee or pur-  
2 chaser of the business.

3 Sec. 12. (a) Unless the statement expires earlier under subsection (b)  
4 or (c), a business ownership name statement expires five years from the  
5 date it was filed in the office of the county clerk.

6 (b) Except as provided in section 15, and amendments thereto, a  
7 business ownership name statement expires 40 days after any change in  
8 the facts set forth in the statement pursuant to section 6, and amendments  
9 thereto, except that a change in the residence address of an individual,  
10 general partner or trustee does not cause the statement to expire.

11 (c) A business ownership name statement expires when the registrant  
12 files a statement of abandonment of the business ownership name de-  
13 scribed in the statement.

14 Sec. 13. Notice of the date of expiration shall be on the business  
15 name statement form.

16 Sec. 14. (a) A person who has filed a business ownership name state-  
17 ment may, upon ceasing to transact business in this state under that busi-  
18 ness name, file a statement of abandonment of use of business ownership  
19 name. The statement shall be executed in the same manner as a business  
20 ownership name statement and shall be filed with the county clerk of the  
21 county in which the person has filed a business ownership name  
22 statement.

23 (b) The statement shall include:

24 (1) The name being abandoned and the street address of the principal  
25 place of business.

26 (2) The date on which the business ownership name statement re-  
27 lating to the business name being abandoned was filed and the county  
28 where filed.

29 (3) In the case of an individual, the full name and address of the  
30 individual.

31 (4) In the case of a partnership or other association of persons, the  
32 full names and residence addresses of all the general partners.

33 (5) In the case of a corporation, the name of the corporation as set  
34 forth in its articles of incorporation.

35 (6) In the case of a business trust, the full name and residence address  
36 of each of the trustees.

37 Sec. 15. (a) Any person who is a general partner in a partnership that  
38 is or has been regularly transacting business under a business ownership  
39 name may, upon withdrawing as a general partner, file a statement of  
40 withdrawal from the partnership operating under a business ownership  
41 name. The statement shall be executed by the person filing the statement  
42 in the same manner as a business ownership name statement and shall  
43 be filed with the county clerk of the county where the partnership filed

- 1 its business ownership name statement.
- 2 (b) The statement shall include:
- 3 (1) The business ownership name of the partnership.
- 4 (2) The date on which the business ownership name statement for  
5 the partnership was filed and the county where filed.
- 6 (3) The street address of its principal place of business in this state  
7 or, if it has no place of business in this state, the street address of its  
8 principal place of business outside this state, if any.
- 9 (4) The full name and residence of the person withdrawing as a  
10 partner.
- 11 (c) The withdrawal of a general partner does not cause a business  
12 ownership name statement to expire if the withdrawing partner files a  
13 statement of withdrawal in accordance with subsections (a) and (b).
- 14 Sec. 16. (a) The county clerk shall furnish, without charge, a form  
15 satisfying the requirements of subsection (a) of section 6, and amend-  
16 ments thereto. The form prepared by the county clerk, or the material  
17 provided by the county clerk with the form, shall include statements sub-  
18 stantially as follows:
- 19 “Any person who executes or files any business ownership name state-  
20 ment, knowing that such statement is false, in whole or in part, is guilty  
21 of a misdemeanor and upon conviction thereof shall be subject to a civil  
22 penalty of not more than \$1,000 per violation (section 22, and amend-  
23 ments thereto).”
- 24 (b) The county clerk may furnish, without charge, forms meeting the  
25 requirements for a statement of abandonment of use of a business own-  
26 ership name and a statement of withdrawal from partnership operating  
27 under a business name.
- 28 Sec. 17. (a) The county clerk shall maintain one or more indices  
29 which permit the determination of at least the following information:
- 30 (1) Whether any business using a specific business ownership name  
31 has on file a business ownership name statement setting forth such name  
32 and, if so, the file number of the statement.
- 33 (2) Whether any individual, general partner or corporation is listed  
34 in any business ownership name statement on file and, if so, the file  
35 number of the statement.
- 36 (3) Whether a statement of abandonment of use of a specific business  
37 ownership name is on file and, if so, the file number of the statement of  
38 abandonment.
- 39 (4) Whether a statement of withdrawal from a partnership operating  
40 under a business ownership name is on file and, if so, the file number of  
41 the statement of withdrawal.
- 42 (b) Four years after a business ownership name statement has ex-  
43 pired, the county clerk may delete the information concerning that state-

1 ment from the index, including any references to statements of abandon-  
2 ment of use, statements of withdrawal of partnerships or any other  
3 references related to a business ownership name statement which is being  
4 deleted from the index.

5 Sec. 18. (a) As used in this section, “statement” means a business  
6 ownership name statement, a statement of abandonment of use of busi-  
7 ness ownership name or a statement of withdrawal from partnership op-  
8 erating under a business ownership name.

9 (b) For a fee of \$2, the county clerk shall provide any person who so  
10 requests a certified copy of any statement on file in the office.

11 (c) A copy of a statement, when certified as provided in subsection  
12 (b), establishes a rebuttable presumption of all of the following:

13 (1) The existence of the original statement.

14 (2) The execution of the statement by the person by whom it purports  
15 to have been executed.

16 (3) The truth of the information required by sections 6, 14 or 15, and  
17 amendments thereto, that is contained in the statement.

18 (d) The presumptions established by subsection (c) are presumptions  
19 affecting the burden of producing evidence.

20 Sec. 19. (a) The county clerk shall mark each business ownership  
21 name statement with a file number and the date of filing and shall retain  
22 the original statement for the file. The county clerk may destroy or oth-  
23 erwise dispose of the statement four years after the statement expires.

24 (b) The county clerk shall mark each statement of abandonment of  
25 use of business ownership name or statement of withdrawal from part-  
26 nership operating under business ownership name with a file number and  
27 the date of filing. The county clerk may destroy or otherwise dispose of  
28 the statement at the same time the business ownership name statement  
29 to which it relates is destroyed pursuant to subsection (a).

30 Sec. 20. (a) Upon prepayment of the fee established pursuant to sub-  
31 section (b), the county clerk may furnish to any person who so requests  
32 daily or less frequent summaries or compilations of filings under this act.

33 (b) The fee for furnishing information under this section shall be  
34 fixed by the county clerk with the approval of the county board of super-  
35 visors and shall be sufficient to pay at least the actual cost of furnishing  
36 such information.

37 Sec. 21. (a) The fee for filing a business ownership name statement  
38 is \$10 for the first business ownership name and \$2 for each additional  
39 business ownership name filed on the same statement and doing business  
40 at the same location. This fee covers the cost of filing and indexing the  
41 statement, furnishing one certified copy of the statement to the person  
42 filing the statement.

43 (b) The \$10 fee for filing a business ownership name statement shall

1 include up to one partner operating under the business ownership name  
2 statement. A fee of \$2 shall be charged for each additional partner op-  
3 erating under the same business ownership name statement.

4 (c) The fee for filing a statement of abandonment of use of a business  
5 ownership name is \$5. This fee covers the cost of filing and indexing the  
6 statement.

7 (d) The fee for filing a statement of withdrawal from partnership  
8 operating under a business ownership name is \$5. This fee covers the  
9 cost of filing and indexing the statement.

10 Sec. 22. Any person who executes or files any statement under this  
11 act, knowing that such statement is false, in whole or in part, shall be  
12 guilty of a misdemeanor and upon conviction thereof shall be punished  
13 by a civil penalty recoverable in an individual action or in an action  
14 brought by the attorney general in a sum set by the court of not more  
15 than \$1,000 per violation.

16 Sec. 23. This act shall take effect and be in force from and after its  
17 publication in the statute book.