

Approved: 3-23-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice Chairperson Tim Emert at 10:05 a.m. on March 4, 1993 in Room 514-S of the Capitol.

All members were present except: Senators Martin and Brady (both excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Representative David Adkins
Paul Shelby, OJA
Representative Doug Mays
Bob Alderson, Topeka Attorney
Jennifer Wentz, Deputy Assistant Secretary of State
Matt Lynch, Judicial Council

Others attending: See attached list

HB 2168 - Exempting student aid money from garnishment proceedings.

Representative David Adkins appeared in support of HB 2168 which would prevent creditors from garnishing or attaching funds when held by a Kansas institution of post-secondary education for a student's educational expenses (Attachment 1). Representative Adkins noted the bill would relieve student financial aid officers from the burden of responding to and acting on garnishment or attachment pleadings, but would not affect the student's obligation to repay school loans.

HB 2166 - Employers cannot fire employees for serving on a jury.

Representative David Adkins testified that HB 2166 would put in Kansas law statutory protection of an individual's job when he or she serves on a jury (Attachment 2). The bill mirrors language of a federal statute protecting federal juries. Representative Adkins suggested amending the bill by deleting the sentence "Such action shall be brought within one year from the date of discharge from employment" to correct a language inconsistency.

Paul Shelby, Office of Judicial Administration, appeared in support of HB 2166 stating the bill addresses a standard already adopted by Kansas relating to Jury Use and Management (Attachment 3).

HB 2172 - Annual meetings for corporations.

Representative Doug Mays appeared in support of HB 2172 stating the bill amends statute to provide that any corporation registered under the Investment Company Act of 1940 be required to hold an annual meeting only in any year in which the election of directors is required under the 1940 Act (Attachment 4). Representative Mays explained that this amendment regarding annual meetings of mutual funds will result in significant savings realized through the elimination of expensive proxy solicitations and mailings.

Bob Alderson, Topeka Attorney, appeared to request an amendment to HB 2172 correcting typographical errors in 1992 HB 3152 which amended the Kansas General Corporation Code addressed in HB 2172 and also making additions to the statute to maintain consistency with the corresponding Delaware statute (Attachment 5).

Jennifer Wentz, Deputy Assistant Secretary of State, appeared in support of the amendments offered by Mr. Alderson to HB 2172 (Attachment 6). In addition, Ms. Wentz requested an amendment to K.S.A. 17-7002(f) providing that not for profit corporations are only required to file the annual reports for the three most recent reporting periods when restoring, renewing or reviving their articles of incorporation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on March 4, 1993.

HB 2098 - Civil procedure, service of process.

Matt Lynch, Judicial Council, appeared in support of HB 2098 which would amend K.S.A. 60-906 in section 2, page 3, line 25 by reinserting the phrase "or otherwise" (Attachment 7). Mr. Lynch explained that in 1990 K.S.A. 60-906 was amended inappropriately because that section is concerned with the binding effect of the injunction upon non-parties who act in concert with enjoined defendants and not with how an injunction order is served, i.e., personal service vs. certified mail.

Senator Bond moved approval of the minutes of February 15, 16, 17 and 18, 1993 as written. Senator Vancrum seconded. Motion carried.

Senator Ranson moved to amend HB 2166 by deleting the words "intimidate or coerce" in line 14, page 1 and adding a semicolon in line 9, page 1. Senator Rock seconded. Motion carried. Senator Bond moved that HB 2166, as amended, be recommended favorably for passage. Senator Petty seconded. Motion carried.

Senator Vancrum moved that HB 2172 be amended by adopting the Alderson proposed amendments. Senator Bond seconded. Motion carried. Senator Ranson moved adoption of the amendment requested by the Secretary of State's office to HB 2172. Senator Rock seconded. Motion carried. Senator Parkinson moved that HB 2172, as amended, be recommended favorably for passage. Senator Vancrum seconded. Motion carried. Senator Ranson declared a conflict of interest on HB 2172.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for March 9, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-4-45

[illegible]

State of Kansas
House of Representatives

State Capitol
Room 448-N
Topeka, Kansas 66612-1504
(913) 296-7693



Committee Assignments

Taxation
Judiciary

David Adkins
Representative, 28th District

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

March 4, 1993

House Bill 2168

Mr. Chairman and Members of the Senate Judiciary Committee:

Thank you for this opportunity to appear before you today as a proponent and co-sponsor of House Bill 2168. This bill, if enacted, would prevent creditors from garnishing or attaching funds when held by a Kansas Institution of post-secondary education for a student's educational expenses.

Student financial aid offices frequently receive and disburse student loan, scholarship and aid monies on behalf of students attending an educational institution. The purpose of this bill is to insure that such monies get into the hands of the students. The exemption from garnishment, attachment or execution provided in this bill relieves the student financial aid officers from the burden of responding to and acting on garnishment or attachment pleadings.

This bill does not compromise in any way the obligation of a student or former student to repay a debt incurred.

This bill enacts what I believe to be an appropriate public policy and I would urge your recommendation of its passage to the full Senate.

Thank you for your courtesy in conducting a hearing on this bill. I stand for questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David Adkins".

David Adkins

State of Kansas
House of Representatives

State Capitol
Room 448-N
Topeka, Kansas 66612-1504
(913) 296-7693



Committee Assignments

Taxation
Judiciary

David Adkins
Representative, 28th District

TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY

March 4, 1993

House Bill 2166

Mr. Chairman and Members of the Senate Judiciary Committee:

Thank you for this opportunity to appear before you as a sponsor of House Bill 2166. I appreciate your courtesy in conducting a hearing on this bill.

House Bill 2166 was suggested by a prosecutor with the Johnson County District Attorney's office. A juror in a civil action was recently terminated from employment as a result of service on a jury in a Johnson County District Court trial. When the judge learned of the termination he requested the assistance of the District Attorney's office in determining whether Kansas law would protect the juror's employment. The prosecutor's office discovered Kansas currently has no statutory job protection for jurors.

This bill mirrors language of a federal statute which protects employees who serve on federal juries. The bill enjoyed strong support in the House Judiciary Committee and on final action by the full House.

I would suggest one amendment to the bill. The House committee amended the bill to include a one year statute of limitation provision. The committee amendment is set forth on page 2, line 7-9 of the bill. In order to clarify the intent of the committee I would suggest deleting the sentence "Such action shall be brought within one year from the date of discharge from employment." The bill provides a civil action for discharge but also for threatened discharge, intimidation, or coercion. The statute of limitation language as set forth in the latest version of the bill only references "date of discharge." The scope of actionable conduct set forth in section I. (a) is broader than "discharge." Deleting the sentence indicated remedies this linguistic inconsistency.

I believe the enactment of House Bill 2166 will further the interest of justice in our courts and in our state. I urge you to recommend House Bill 2166 favorable for passage to the full Senate.

Again, thank you for the opportunity to appear before you today on what I believe is an important issue. I stand for questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David Adkins".

David Adkins

House Bill No. 2166
Senate Judiciary Committee
March 4, 1993

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee I thank you for the opportunity to appear and support House Bill No. 2166 which relates to jury service.

Kansas was one of the first states to adopt Standards relating to Jury Use and Management. Our standards were adopted by the Supreme Court effective July 15, 1983, as guidelines to assist the District Courts in the management of jury systems within the State of Kansas. There are a total of 19 such standards which are published and appear in the Report of Rules enacted by the Supreme Court of the State of Kansas.

I bring to your attention Standard 15 (c): Juror Compensation and I quote:

(c) "State law should prohibit employers from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service".
End Quote.

We fully support House Bill No. 2166 which addresses this standard and we urge the committee to pass this bill favorably.

Thank you Mr. Chairman and I will stand for any questions.

SJ

3-4-93

Attachment 3

DOUG MAYS
REPRESENTATIVE, FIFTY-FOURTH DISTRICT
SHAWNEE COUNTY
1920 SW DAMON CT.
TOPEKA, KANSAS 66611-1926
(913) 266-4885
STATE CAPITOL—ROOM 426-S
TOPEKA, KS 66612-1504
(913) 296-7668



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: TAXATION
LOCAL GOVERNMENT
JUDICIARY

Testimony on HB 2172

By Representative Doug Mays

Proposal: K.S.A. 17-6501 provides that a corporation shall hold an annual meeting of stockholders for the election of directors at the date and time specified in the corporation's bylaws. H.B.2172 amends the statute to provide that any corporation registered under the Investment Company Act of 1940 (the 1940 Act) be required to hold an annual meeting only in any year in which the election of directors is required under the 1940 Act.

Background: Corporations registered under the 1940 Act are known as investment companies or, more commonly, mutual funds. Mutual funds are investment vehicles through which investors pool funds that are, in turn, invested for them by professional money managers. Each share of a mutual fund represents an undivided interest in potentially hundreds of equity or debt instruments. There currently exists in excess of 4000 mutual funds in the United States, with new funds being chartered at the approximate rate of one per day.

The 1940 Act does not mandate that meetings for the purpose of electing directors be held on an annual basis. Rather, a meeting of the shareholders is required when less than two-thirds of the directors "...have been elected to such office by the holders of the outstanding voting securities of the company at such an annual or special meeting."

This provision of the 1940 Act recognizes the fundamentally different attitude that shareholders of mutual funds hold with regard to their investment as compared to stockholders of traditional corporations. Seldom do owners of mutual fund shares show even passing interest in management, or display any loyalty to the investment company aside from that engendered by outstanding market performance. When dissatisfied with performance, they simply switch funds the same way one might switch banks in pursuit of higher interest rates. It is a rare annual meeting when even one shareholder shows up.

The amendment regarding annual meetings of mutual funds will result in significant savings realized through the elimination of expensive proxy solicitations and mailings. These savings will be passed on directly to the shareholders.

SJ

3-4-93

Attachment 4

Other states: Delaware and Massachusetts have similar provisions for investment companies organized as business trusts, and the state of Maryland recently enacted this language for corporations. Delaware has been aggressively promoting this and other recent changes favorable to mutual funds with the purpose of enticing the funds to charter and possibly locate there. They, along with Maryland, have apparently been meeting with some success. In fact, our state's only domiciled mutual fund family, Security Management Company, intends to move its charter to Maryland should this legislation fail.

Conclusion: When enacted, H.B.2172 will result in a Kansas much more attractive to the 4000 plus mutual funds existing in the U.S. today, including several in Kansas City, Mo. It will also insure a continuing relationship with this state's own fund group. At the same time, adequate share holder safeguards will be afforded under the 1940 Act.

ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

ATTORNEYS AT LAW

2101 S.W. 21ST STREET

P.O. BOX 237

TOPEKA, KANSAS 66601-0237

W. ROBERT ALDERSON, JR.

ALAN F. ALDERSON

STEVEN C. MONTGOMERY

C. DAVID NEWBERY

JOSEPH M. WEILER

JOHN E. JANDERA

DARIN M. CONKLIN

TELEPHONE:

(913) 232-0753

FAX:

(913) 232-1866

OF COUNSEL

DANIEL B. BAILEY

MEMORANDUM

TO: Senate Committee on Judiciary

FROM: Bob Alderson

RE: Amendment of 1993 House Bill No. 2172

DATE: March 4, 1993

I am Bob Alderson, an attorney in private practice in Topeka, and I am appearing on House Bill No. 2172, to request the amendment of that bill. Although I represent a number of organizations as their registered lobbyist, I am not appearing on behalf of any of those organizations. Rather, I am appearing on my own behalf, since my law practice includes a considerable amount of time devoted to corporate law. I also ought to note at the outset that I am neither a proponent nor opponent of this bill, with respect to the changes proposed by the bill in K.S.A. 17-6501. However, I am appearing as a "proponent" to the extent that I would respectfully request the Committee's amendment of the bill.

On June 1, 1992, I concluded a three-year stint as Chairman of the Kansas Bar Association's Legislative Committee. In that capacity, I drafted and obtained introduction of House Bill No. 3152 by the 1992 Legislature. That bill effected numerous changes in the Kansas General Corporation Code, most of which were designed to maintain our Corporation Code's conformity with the Delaware Corporation Code. Subsequent to this bill's enactment and taking effect on July 1, 1992, I had the occasion to review the bill in detail, in the course of my preparation of the manuscript for the 1993 supplement to Vernon's Kansas Statutes Annotated -- General Corporation Code. As a result, I discovered typographical errors and other minor errors in several of the sections, and the purpose of my appearance today is to request the correction of these errors.

Attached to this memorandum is a proposed Committee Amendment to HB 2172. The sections included in this amendment are K.S.A. 1992 Supp. 17-6401, 17-6508, 17-6701, 17-6704, 17-6704a, 17-6705 and 17-6706. The attached amendment indicates the changes which are proposed in each of these sections, and the following is an explanation of each of those changes.

SJ

3-4-93

Attachment 5

1. 17-6401. In the last paragraph of subsection (b) of this statute, the word "of" should be changed to "or," in order to make sense.
2. 17-6508. In both subsections (a) and (b), the word "trustee" should be "trustee's."
3. 17-6701. In subsections (f)(3), there are two changes that are needed. The word "or" needs to be changed to "of," and the semicolon at the end of that clause should be a coma. With respect to the latter change, a semicolon changes entirely the meaning of that provision.
4. 17-6704, 17-6704a. In subsection (c) of 17-6704, there was omitted language that is necessary to achieve conformity with the corresponding Delaware statute (8 Del. C. § 154), as well as to make sense of this provision. (I must confess that this omission occurred in the rough draft of HB 3152 which I submitted to the Revisor's Office.)

In addition, as you are perhaps aware, 17-6704 was amended twice by the 1992 Legislature. The "second" amendment (L. 1992, ch. 72, § 6) appears in the current supplement as "17-6704a," and the only change made in 17-6704 by this amendment was the addition of subsection (g). In order to reconcile these sections, subsection (g) of 17-6704a has been included in the attached amendment of 17-6704, and 17-6704a would be repealed.

5. 17-6705. The change proposed in this statute is not the result of an "error" in last year's legislation, although the amendment of this statute as proposed in the attached Committee Amendment should have been included in HB 3152, in order to maintain consistency with the corresponding Delaware statute (8 Del. C. § 255). K.S.A. 17-6706 was amended in 1992, and the purpose of that amendment was to expand the scope of that section to include all nonstock corporations, whether or not organized for profit. However, a comparable amendment was not made to K.S.A. 17-6705, and it remains applicable only to nonstock, "nonprofit" corporations, even though the corresponding Delaware statute is not so limited. As a result, while a nonstock corporation of this state, whether or not organized for profit, may merge or consolidate with a nonstock corporation of another state, whether or not such foreign corporation is organized for profit, as provided in K.S.A. 1992 Supp. 17-6706, K.S.A. 1992 Supp. 17-6705 is still limited to the merger or consolidation of two or more nonstock, "nonprofit" corporations of this state.

Even though amending K.S.A. 1992 Supp. 17-6705 would not be purely "clean-up," I would suggest that it be amended to not only achieve conformity with the corresponding Delaware

statute, but also to maintain some consistency with the amendment made last session to K.S.A. 17-6706.

6. 17-6706. In subsection (c) of this statute, there was the inadvertent omission of the words "and recorded." As originally introduced, HB 3152 proposed to eliminate throughout the Corporation Code the requirement that documents filed with the Secretary of State also be recorded with the appropriate register of deeds' office. This deletion was included to accommodate that proposal. However, when the proposal to delete the filing requirement with the register of deeds was rejected by the House Committee on Judiciary, this language was not replaced.

As should be evident from the proposed amendment attached and the foregoing explanation, with the exception of the amendment proposed to K.S.A. 1992 Supp. 17-6705, the amendments being requested are clearly in the nature of "clean-up," and even the amendment requested to 17-6705 is consistent with the Kansas Legislature's continuing policy to maintain the comparability of our Corporation Code to the Delaware Code.

Thank you for your consideration of this request. I will be happy to respond to any questions you may have.

PROPOSED AMENDMENT TO
HOUSE BILL NO. 2172

On page 1, following the enacting clause, by inserting a new Section 1, to read as follows:

"Section 1. K.S.A. 1992 Supp. 17-6401 is hereby amended to read as follows: 17-6401.

(a)
Every corporation, whether or not organized for profit, may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided in this act shall apply to all or any such classes of stock.

(b) The stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event, except that at the time of such redemption the corporation shall have outstanding shares of at least one class or series of stock with full voting powers which shall not be subject to redemption. Notwithstanding the foregoing limitation:

(1) Any stock of a regulated investment company registered under the investment com-

any act of 1940 (15 U.S.C. §§80a-1 *et seq.*), and amendments thereto, may be made subject to redemption by the corporation at its option or at the option of the holders of such stock; and

(2) any stock of a corporation which holds directly or indirectly a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it.

Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same ~~of~~ another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to subsection (a). or

(c) The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this act provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) At the option of either the holder or the corporation or upon the happening of a specified event, any stock of any class or of any series thereof may be made convertible into or exchangeable for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the articles of

incorporation or in the resolution or resolution providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent certificated shares of such class or series of stock. Except as otherwise provided in K.S.A. 17-6426, and amendments thereto, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation issues to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or K.S.A. 17-6406, subsection (a) of K.S.A. 17-6426 or subsection (a) of K.S.A. 17-6508, and amendments thereto, or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights, or both. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

(g) When any corporation desires to issue any shares of stock of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the articles of incorporation or in any amendment thereto, but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, and amendments thereto. Unless oth-

erwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased, but not above the total number of authorized shares of the class, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged, filed and recorded setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no share of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding and that none will be issued may be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, and amendments thereto, and, when such certificate becomes effective, it shall have the effect of eliminating from the articles of incorporation all reference to such class or series of stock. Unless otherwise provided in the articles of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which (1) states that no shares of the class or series have been issued, (2) sets forth a copy of the resolution or resolutions and (3) if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged, filed, recorded and shall become effective in accordance with K.S.A. 17-6003, and amendments thereto. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the articles of incorporation, except that neither the filing of such certificate nor the filing of restated articles of incorporation pursuant to K.S.A. 17-6605, and amendments thereto, shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

Also, on page 1, by renumbering original Section 1 as Sec. 2.;

On page 2, following line 16, by inserting five new sections to read as follows:

"Sec. 3. K.S.A. 1992 Supp. 17-6508 is hereby amended to read as follows: 17-6508.

(a) One or more stockholders, by agreement in writing, may transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in such person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, not exceeding 10 years, upon the terms and conditions stated in such agreement. The validity of a voting trust agreement, otherwise lawful, shall not be affected during a period of 10 years from the date when it was created or last extended, as provided in subsection (b), by the fact that under its terms it will or may last beyond such 10-year period. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the

corporation in this state, which copy shall be open to the inspection of any stockholder of the corporation, or any beneficiary of the trust under the agreement, daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with such trustee or such trustees, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock therefor shall be issued to the voting trustee or trustees. In the certificates so issued, if any, it shall be stated that they are issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for such voting ~~trustee or trustees' individual malfeasance.~~ In any case where two or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

trustee's

b) At any time within two years prior to the time of expiration of any voting trust agreement, as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement, by written agreement and with the written consent of the voting trustee or trustees, may extend the duration of the voting trust agreement for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended, as provided in this subsection. Prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, the voting trustee or trustees shall file in the registered office of the corporation in this state a copy of such extension agreement and of such voting ~~trustee~~ trustee's or trustees' consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement. No such extension agreement shall affect the rights or obligations of persons not parties thereto.

(c) This section shall not be deemed to invalidate or otherwise affect any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal.

"Sec. 4. K.S.A. 1992 Supp. 17-6701 is hereby amended to read as follows: 17-6701.

(a) Any two or more corporations existing under the laws of this state and authorized to issue capital stock may merge into a single corporation, which may be any one of the constituent corporations or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The board of directors of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation; (4) in the case of consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the agreement; (5) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation, and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of

the surviving or resulting corporation the cash, property, rights or securities of a, other corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing certificated shares, which cash, property, rights or securities of any other corporation may be in addition to or in lieu of shares or other securities of the surviving or resulting corporation; and (6) such other details or provisions as are deemed desirable, including, without limiting, the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangement with respect thereto, consistent with the provisions of K.S.A. 17-6405, and amendments thereto. The agreement so adopted shall be executed in accordance with K.S.A. 17-6003, and amendments thereto. Any terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(c) The agreement required by subsection (b) shall be submitted to the stockholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each holder of stock of the corporation, whether voting or nonvoting, at the stockholder's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote taken for its adoption or rejection. If a majority of the outstanding stock of the corporation entitled to vote thereon shall be voted for the adoption of the agreement, that fact shall be certified on the agreement by the secretary or assistant secretary of the corporation. If the agreement shall be so adopted and certified by each constituent corporation, it shall then be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. It shall be recorded in the office of the register of deeds of each county of this state in which the registered office of any such constituent corporation is located; or if any of the constituent corporations shall have been specially created by an act of the legislature, then the agreement shall be recorded in the county where such corporation had its principal place of business in this state. In lieu of filing and recording the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states: (1) The name and state of incorporation of each of the constituent corporations; (2) that an agreement of merger

or consolidation has been approved, adopted, certified, executed and acknowledged by one or more of the constituent corporations in accordance with this section; (3) the name of the surviving or resulting corporation; (4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such changes or amendments are desired, a statement that the articles of incorporation of one of the surviving corporations shall be the articles of incorporation; (5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate; (6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving or resulting corporation, stating the address thereof; and (7) that a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation.

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement or certificate in lieu thereof with the secretary of state, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations. Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement, or a certificate in lieu thereof, with the secretary of state, except that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not: (1) Alter or change the amount or kind of shares, securities, cash, property or rights, or any of the proceedings, in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation; (2) alter or change any term of the articles of incorporation of the surviving or resulting corporation to be effected by the merger or consolidation; or (3) alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation.

(e) In the case of a merger, the articles of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the articles of incorporation are set forth in the agreement of merger.

(f) Notwithstanding the requirements of subsection (c), unless required by its articles of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if: (1) The agreement of merger does not amend in any respect the articles of incorporation of such

constituent corporation; (2) each share of s
of such constituent corporation outstanding im-
mediately prior to the effective date of the
merger is to be an identical outstanding or
treasury share of the surviving corporation after
the effective date of the merger; and (3) either _____ of
no shares of common stock ~~or~~ the surviving
corporation and no shares, securities or obli-
gations convertible into such stock are to be
issued or delivered under the plan of merger; _____ ,
or the authorized unissued shares or the treas-
ury shares of common stock of the surviving
corporation to be issued or delivered under
the plan of merger plus those initially issuable
upon conversion of any other shares, securities
or obligations to be issued or delivered under
such plan do not exceed 20% of the shares of
common stock of such constituent corporation
outstanding immediately prior to the effective
date of the merger. No vote of stockholders of
a constituent corporation shall be necessary to
authorize a merger or consolidation if no shares
of the stock of such corporation shall have been
issued prior to the adoption by the board of
directors of the resolution approving the agree-
ment of merger or consolidation. If an agree-
ment of merger is adopted by the constituent
corporation surviving the merger, by action of
its board of directors and without any vote of
its stockholders pursuant to this subsection, the
secretary or assistant secretary of that corpo-
ration shall certify on the agreement that the
agreement has been adopted pursuant to this
subsection and: (1) If it has been adopted pur-
suant to the first sentence of this subsection,
that the conditions specified in that sentence
have been satisfied, or (2) if it has been
adopted pursuant to the second sentence of
this subsection, that no shares of stock of such
corporation were issued prior to the adoption
by the board of directors of the resolution ap-
proving the agreement of merger or consoli-
dation. The agreement so adopted and certified
shall then be executed, acknowledged and
filed, and shall become effective, in accordance
with K.S.A. 17-6003, and amendments thereto.
Such filing shall constitute a representation by
the person who executes the agreement that
the facts stated in the certificate remain true
immediately prior to such filing.

"Sec. 5. K.S.A. 1992 Supp. 17-6704 is hereby amended to
read as follows: 17-6704.

(a) The term "joint-stock
association," as used in this section, includes
any association of the kind commonly known
as joint-stock association or joint-stock company
and any unincorporated association, trust or
enterprise having outstanding shares of stock
or other evidences of financial or beneficial in-
terest therein, whether formed by agreement
or under statutory authority or otherwise, but
does not include a corporation. The term
"stockholder," as used in this section, includes
every member of such joint-stock association
or holder of a share of stock or other evidence
of financial or beneficial interest therein.

b) Any one or more corporations of this state may merge or consolidate with one or more joint-stock associations, except a joint-stock association formed under the laws of a state which forbids such merger or consolidation. Such corporation or corporations and such one or more joint-stock associations may merge into a single corporation or joint-stock association, which may be any one of such corporations or joint-stock associations of this state, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or resulting entity may be organized for profit or not organized for profit and, if the surviving or resulting entity is a corporation, it may be a stock corporation or a nonstock corporation.

(c) Each such corporation and joint-stock association shall enter into a written agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the shares of stock of each stock corporation, the interests of members of each nonstock corporation, and the shares, memberships or financial or beneficial interests in each of the joint-stock associations into shares or other securities of a stock corporation or membership interests of a nonstock corporation or into shares, memberships surviving or resulting from such merger or consolidation, and, if any shares of any such stock corporation, any membership interests of any such nonstock corporation, or any shares, memberships or financial or beneficial interests in any such joint-stock association are not to be converted solely into shares or other securities of the stock corporation or membership interest of the nonstock corporation or into shares, memberships, or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation, membership interests of any such nonstock corporation, or shares, memberships or financial or beneficial interests of any such joint-stock association are to receive in exchange for, or upon conversion of such shares, membership interest or shares, memberships or financial or beneficial interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of the stock corporation or membership interests of the nonstock corporation or shares, memberships, or financial or beneficial interests of the joint-stock association surviving or resulting from such merger or consolidation; and (4) such other details or pro-

, or financial or
beneficial interests of
the joint-stock association

visions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares where the surviving or resulting entity is a corporation. There shall also be set forth in the agreement such other matters or provisions as shall then be required to be set forth in articles of incorporation by the laws of this state and that can be stated in the case of such merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(d) The agreement required by subsection (c) of this section shall be adopted, approved, executed and acknowledged by each of the corporations in the same manner as is provided in K.S.A. 17-6701, and amendments thereto, and in the case of the joint-stock associations in accordance with their articles of association or other instrument containing the provisions by which they are organized or regulated or in accordance with the laws of the state under which they are formed, as the case may be. Where the surviving or resulting entity is a corporation, the agreement shall be filed and recorded and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6701, and amendments thereto, with respect to the merger or consolidation of corporations of this state. In lieu of filing and recording the agreement of merger or consolidation, where the surviving or resulting entity is a corporation, it may file a certificate of merger or consolidation, executed in accordance with K.S.A. 17-6003, and amendments thereto, which states:

(1) The name and state of domicile of each of the constituent entities;

(2) that an agreement of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with this subsection;

(3) the name of the surviving or resulting corporation;

(4) in the case of a merger, such amendments or changes in the articles of incorporation of the surviving corporation as are desired to be effected by the merger or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be its articles of incorporation;

(5) in the case of a consolidation, that the articles of incorporation of the resulting corporation shall be as is set forth in an attachment to the certificate;

(6) that the executed agreement of consolidation or merger is on file at the principal place of business of the surviving corporation and the address thereof; and

(7) that a copy of the agreement of consolidation or merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of any constituent entity.

Where the surviving or resulting entity is a joint-stock association, the agreement shall be filed and shall be effective for all purposes when filed in accordance with the laws regulating the creation of joint-stock associations.

(e) The provisions of subsections (d) and (e) of K.S.A. 17-6701, 17-6709 through 17-6712, and 17-7103, and amendments thereto, shall apply, insofar as they are applicable, to mergers or consolidations between corporations and joint-stock associations; and the word "corporation" where applicable, as used in those sections, shall be deemed to include joint-stock associations as defined herein. The personal liability, if any, of any stockholder of a joint-stock association existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable non-stock corporation or charitable joint-stock association into a stock corporation or joint-stock association, if the charitable status of such non-stock corporation or joint-stock association would thereby be lost or impaired, but a stock corporation or joint-stock association may be merged into a charitable nonstock corporation or charitable joint-stock association which shall continue as the surviving corporation or joint-stock association.

Λ

(g) A merger of Armed Forces Cooperative Insuring Association into Armed Forces Insurance Exchange, with Armed Forces Insurance Exchange being the survivor in such merger, shall be a valid merger under the General Corporation Code of the state of Kansas upon a filing of the merger agreement with the secretary of state.

"Sec. 6. K.S.A. 1992 Supp. 17-6705 is hereby amended to read as follows: 17-6705.

(a) Any two or more nonstock ~~nonprofit~~ corporations of this state ~~may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new nonstock, nonprofit corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.~~ , whether or not organized for profit,

b) The governing body of each corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this act to be stated in articles of incorporation for nonstock, nonprofit corporations as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and (5) such other details or provisions as are deemed desirable. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(c) The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of such corporation, at the member's address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement or a brief summary thereof, as the governing body shall deem advisable. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of his corporation being entitled to one vote. If the votes of $\frac{2}{3}$ of the total number of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement or, in the case of a nonstock, nonprofit insurance corporation, other than a nonprofit dental service corporation organized and operated under the nonprofit dental service corporation act, cited at K.S.A. 40-19a01 et seq., and amendments thereto, if $\frac{2}{3}$ of the total number of members voting at an annual or special meeting for the purpose of acting on the agreement vote for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation, under the seal of each such

corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. It shall be recorded in the office of the register of deeds of the county in this state in which the registered office of each such constituent corporation is located; or if any of the constituent corporations shall have been specially created by act of the legislature, then the agreement shall be recorded in the county where such corporation had its principal place of business in this state. The provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.

(d) If, under the provisions of the articles of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided in subsection (b) shall be submitted to the members of the governing body of such corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting $\frac{2}{3}$ of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation; thereafter, the same procedure shall be followed to consummate the merger or consolidation.

(e) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired, but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.

"Sec. 7. K.S.A. 1992 Supp. 17-6706 is hereby amended to read as follows: 17-6706.

(a) Any one or more nonstock corporations of this state may merge or consolidate with one or more other nonstock corporations of any other state or states of the United States or of the District of Columbia, if the laws of such other jurisdiction permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction. The constituent corporations may merge into a single corporation,

which may be any one of the constituent corporations, or they may consolidate into a new nonstock corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more nonstock corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more nonstock corporations of this state if the surviving or resulting corporation will be a corporation of this state, and if the laws under which the other corporation or corporations are formed permit a corporation of such jurisdiction to merge with a corporation of another jurisdiction.

(b) All the constituent corporations shall enter into an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from such merger or consolidation; (4) such other details and provisions as shall be deemed desirable; and (5) such other provisions or facts as shall then be required to be stated in articles of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, if the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(c) The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed and, in the case of a Kansas corporation, in the same manner as is provided in K.S.A. 17-6705, and amendments thereto. The agreement shall be filed and shall become effective for all purposes of the laws of this state when and as provided in K.S.A. 17-6705, and amendments thereto, with respect to the merger of nonstock corporations of this state. Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (c) of K.S.A. 17-6702, and amendments thereto, shall apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.

(d) If the corporation surviving or resulting from the merger or consolidation is to be gov-

and recorded

erned by the laws of any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, and shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process. The secretary of state shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of subsection (e) of K.S.A. 17-6701, and amendments thereto, shall apply to a merger under this section, if the corporation surviving the merger is a corporation of this state.

And by renumbering original sections 2 and 3 as sections 8 and 9, respectively;

Also on page 2, in line 17, by striking "is" and inserting in lieu thereof the following: "and K.S.A. 1992 Supp. 17-6401, 17-6508, 17-6701, 17-6704, 17-6704a, 17-6705 and 17-6706 are";

In the title, in line 2 thereof by inserting after "and" the following: "K.S.A. 1992 Supp. 17-6401, 17-6508, 17-6701, 17-6704, 17-6705 and 17-6706, and"; also in line 2, by striking "section" and inserting in lieu thereof the following: "sections; also repealing K.S.A. 1992 Supp. 17-6704a.";

And the bill be passed as amended.

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS
Testimony of Jennifer Chaulk Wentz
Deputy Assistant Secretary of State/Legal Counsel
March 4, 1993

HB 2172
Senate Judiciary Committee

Thank you Mr. Chairman and members of the committee.

The Secretary of State's office supports the amendments offered by Mr. Alderson to HB 2172. Mr. Alderson had previously contacted our office about the amendments, which reflect changes to the Delaware Corporate Code after which our corporate code is patterned.

We offer one additional amendment. We ask that K.S.A. 17-7002(f) be amended so that not for profit corporations are only required to file the annual reports for the three most recent reporting periods when restoring, renewing or reviving their articles of incorporation. When not for profit corporations reinstate, they often have numerous reports due for which financial and officer and director information is unknown. It is often times overly burdensome for these corporations to try to collect such information.

I would be happy to stand for questions. Thank you.

SJ
3-4-93
Attachment 6

JUDICIAL COUNCIL TESTIMONY ON 1993 HB 2098

BINDING EFFECT OF INJUNCTIONS
AND RESTRAINING ORDERS ON NONPARTIES

MARCH 4, 1993

HB 2098 amends K.S.A. 60-906 in section 2, page 3, line 25 by reinserting the phrase "or otherwise."

This phrase was deleted in the 1990 legislation providing for service of process by certified mail. Under the 1990 legislation, service by certified mail was made equivalent to personal service. However, the legislature chose to require personal service, rather than certified mail service, under certain statutes: K.S.A. 60-903 (restraining order issued without notice), 60-906, 60-3104 (proceedings under protection from abuse act) and 60-1607(a)(1) and (2) (restraining orders in divorce cases).

It appears the 1990 amendment to K.S.A. 60-906 was inappropriate. K.S.A. 60-906 deals primarily with the scope of an injunction's binding effect and is copied almost verbatim from federal rule of civil procedure 65(d). FRCP 65(d) and presumably K.S.A. 60-906 were intended to make it clear that persons acting in concert or participation with the defendant named in the injunction could be punished for contempt for violation of the injunction, even if they have not been served with process, if they have actual notice of the injunction. In other words, K.S.A. 60-906 is not concerned with how an injunction order is served, but rather with the binding effect of the injunction upon nonparties who act in concert with enjoined defendants, regardless of how the nonparties receive actual notice of the injunction.

FRCP 65(d)

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

SJ

3-4-93

Attachment 7