

SESSION OF 2009

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 132**

As Amended by House Committee on  
Judiciary

**Brief\***

SB 132, as amended, would enact the Business Entity Transactions Act (BETA) to provide comprehensive statutory authority for business entities (corporations, partnerships, limited partnerships, and limited liability companies) to perform mergers, conversions, interest exchanges, and domestications with similar or dissimilar business entities. Additionally, the bill would codify procedures for business entities to accomplish these transactions.

The bill would define the authorized transactions as follows:

- A merger means a transaction in which two or more entities are combined into a surviving entity pursuant to a filing with the Secretary of State;
- A conversion means a transaction in which a single entity transforms itself into a different type of entity, *i.e.*, a limited liability company becomes a partnership;
- An interest exchange, which currently is not an authorized transaction in Kansas but would be authorized with the passage of this bill, would mean a transaction in which one entity acquires the stock of another entity; and
- A domestication, which currently is not an authorized transaction in Kansas but would be authorized with the passage of this bill, would mean a transaction in which a foreign entity, *e.g.*, a Missouri limited partnership, becomes a domestic entity whose internal affairs are governed by Kansas law. It also means a transaction in which a domestic entity becomes a foreign entity whose

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

internal affairs are governed by another state's law, assuming a reciprocal law is in place in the foreign jurisdiction.

The bill excludes insurance companies, banks, trust companies, credit unions, professional corporations, and limited liability companies from participating in transactions under BETA. Public utilities, however, are subject to the general business entity provisions, unless the provisions are inconsistent.

The bill would be effective on July 1, 2010.

### **Background**

The Model Entity Transaction Act was drafted by the American Bar Association and the National Conference of Commissioners on Uniform State Laws to provide procedures for business transactions and to make mixed entity transactions easier and more universally possible. The objective of the drafters of the Model Act was to accomplish mergers, conversions, interest exchanges, and domestications without extinguishing any obligations owed by preceding business entities when the preceding business entity combines into the surviving entity.

BETA is based upon the Model Act with minor changes necessary to integrate it and make it consistent with existing Kansas law.

The proponents of the bill who presented testimony at the Senate Committee hearing were Edwin "Webb" Hecker, Jr., Professor of Law, and Diane Minear, Secretary of State's Office.

There was no testimony in opposition to the bill.

The Senate Committee on Judiciary amended the bill to incorporate the amendment requested by the Secretary of State to add the definition of "entity" to the bill. Additionally, the Committee amended the bill to repeal additional merger statutes which were inadvertently left out of the bill.

The House Committee on Judiciary amendments were technical in nature.

The fiscal note indicates that the costs of passage of the bill could be absorbed within the existing resources of the Secretary of State and the Office of the Securities Commissioner.