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DENNIS "BOOG" HIGHBERGER
46TH DISTRICT

TESTIMONY ON HB 2401

Before the Judiciary Committee of the Kansas House of Representatives

March 4, 2020

Chairman Barker and Members of the Committee,

Thank you for the opportunity to testify as a proponent of HB 2401. This bill addresses an issue that was brought to me by a business in my community, the Community Mercantile, Inc., otherwise known as "the Merc." The Merc is a cooperatively-structured business that is incorporated as a for-profit corporation under Kansas law.

Unlike as in most for-profit corporations, Merc shareholders are each limited to owning only one voting share. Since its founding in 1974 the Merc has grown to having over 8,000 member-owners. With its new project of opening a grocery store in an underserved Kansas City, Kansas neighborhood, the Merc expects to add a substantial number of new member owners. Its current articles of incorporation allow issuance of only 10,000 shares. In order to issue more than 10,000 shares it will need to amend its articles of incorporation. Under its current articles and existing state law, it would need the approval of a majority of its members to do so.

As you will hear from a Merc representative today, getting the vote of over 4,000 people in a shareholder election like this, even with an aggressive use of proxies, is virtually impossible. I do not see a way around this problem under current state law, and it is my understanding that this opinion is shared by Edwin "Webb" Hecker, professor of business law at the KU School of Law, as you will see from his written testimony.

The bill before you is narrowly tailored to allow the Merc a way out of its dilemma without affecting the quorum requirements for most other corporations. I would be surprised if there are more than a handful of other corporations in the state structured like the Merc, and the Merc is almost certainly the largest. However, with an increasing interest in the cooperative

model as a way of establishing rural grocery stores the proposed change in Kansas corporation law could be helpful to more businesses in the future.

Some states, such as Minnesota and Iowa, have incorporation statutes specifically designed for consumer cooperatives. If the Merc were incorporated under the Minnesota co-op statute, for instance, it would need the vote of only 50 members to amend its articles of incorporation to amend its bylaws. Under the provisions of this bill, it would need the vote of 10% of its members to do so, or a little over 800 at the current time. This is still a high hurdle to achieve, but it is at least in the realm of possibility. Businesses with 500 shareholders or less would not be affected by this bill.

Please join with me in helping a great Kansas business continue to grow and thrive. I would be happy to stand (or sit) for questions.