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STATE OF KANSAS

Testimony: SB424 (Proponent)
Senate Commerce Committee
Thursday, February 20, 2020

Chairwoman Lynn and members of the Committee:

Last year, our team reviewed over 1,000 statutes directly involving the Office of Secretary of State and found many needed updated, clarified or eliminated. SB424 is a product of that effort and we offer this testimony in support of the legislation.

SB424 clarifies the definition of street address used in business filings. The bill also aligns state statute regarding the abbreviation of professional associations and allows for electronic signatures for certain business filings received by the Office of Secretary of State. Finally, SB424 repeals three laws dating back to 1939 regarding blanket music licenses.

Blanket music licenses, most commonly, allow businesses to pay a set fee to a national organization (BMI and ASCAP are the dominant ones) and then play the background music you hear while dining or strolling through a store. Kansas is the only state that still requires these national organizations to annually file copies of every license issued to a state business. Neither the national organizations nor the businesses who pay for the licenses could articulate the reason for still filing these licenses. The paper licenses filed with our office are about 12 inches high and no one at the Secretary of State's office could recall anyone asking to see any of the filed licenses in over a decade.

Finally, SB424 provides a delayed effective date for certain Series LLC provisions enacted last year as part of HB2039. The LLC provisions of the bill that took effect in 2019 were implemented, however, the bill set a July 1, 2020, implementation date for several Series LLC provisions. Under SB424, we are seeking to delay the effective date to implement the Series LLC provisions to July 1, 2022, when we expect to be off the existing AS400 system and onto the new business filing system.

One item we would like to raise for your consideration is the addition of the attached amendment to allow Kansas corporate entities to file fictitious or "DBA" names to prevent other companies from using those aliases. Several other states have similar provisions in their state statutes. We believe this is a simple amendment that would be well received by business entities, especially those near state lines, from nefarious actors.

Thank you for your consideration of this testimony. On behalf of the Secretary of State, we respectfully ask for your support of SB424.

Respectfully Submitted,

Katie Koupal
Deputy Assistant Secretary of State
Communications & Policy

Attachment

Proposed Amendment to SB 424: Fictitious Name Filing

Registration Required

(1) Any covered entity doing business in this state under any name other than its legal name shall file a statement of registration with the Secretary of State setting forth the legal name of the corporation or business entity, the jurisdiction of organization of the covered entity, the fictitious name under which the business is carried on, a brief description of the business transacted under the name, and the address wherein the business is to be carried on. The statement of registration shall be executed by a representative of the covered entity authorized to sign on its behalf and shall be filed within five days after the beginning or engaging in business under such name, and filed in a format prescribed by the secretary of state that shall include:

- (a) The legal name of the covered entity and the covered entity's business identification number;
- (b) The form of covered entity and the jurisdiction under the law of which it is formed;
- (c) The fictitious name, other than the legal name of the covered entity, under which the covered entity transacts business, or contemplates transacting business, in this state;
- (d) A brief description of the kind of business transacted, or contemplated to be transacted, in this state under the fictitious name; and
- (e) Such other information as the secretary of state may require.

(2) The statement of registration shall be executed in accordance with the provisions of K.S.A. 2019 Supp. 17-7908 through 17-7910, and amendments thereto. The fact that an individual's name is signed on such statement of registration shall be prima facie evidence that such individual is authorized to sign the statement of registration on behalf of the corporation; however, the official title or position of the individual signing the report shall be designated. This statement of registration shall be subscribed by the person as true, under penalty of perjury.

Distinguishable on the Record -- The fictitious name adopted shall be such as to be distinguishable upon the records of the Secretary of State from:

- (1) Names of other covered entities organized under the laws of this state and filed with the Secretary of State; or
- (2) Names of foreign business entities qualified to do business in this state and filed with the Secretary of State; or
- (3) Fictitious names filed with the Secretary of State; or
- (4) Names reserved with the Secretary of State.

Filing a fictitious name, term -- A filed statement of registration of a fictitious name shall become effective as provided in section XXX, and, unless the statement of fictitious name is withdrawn in accordance with section XXX, shall remain effective in perpetuity, subject to the provisions of paragraphs XXXX of this subsection (references for dissolutions, cancellations, withdrawals, transfers).

Amendment -- An amendment to registration of a fictitious name must be filed with the secretary of state after any one of the following events occurs:

- (1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the fictitious name is registered;
- (2) there is a change in the description of the business transacted;
- (3) the registrant wishes to change the name of a registered fictitious business name.

Filing amendment to registration of fictitious business name - An amended statement of a fictitious business name for a covered entity must be filed with the secretary of state and must include:

- (1) the complete fictitious business name prior to adoption of the amendment;

- (2) the complete new assumed business name, if applicable;
- (3) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with the registered assumed business name;
- (4) if a person who has had an interest in a business with a registered assumed name withdraws or dies, a statement that the person has withdrawn or died;
- (5) a statement that the amended registration of assumed business name supersedes the original registration and all amendments to the original registration; and
- (6) any other information prescribed by the secretary of state.

Transfer of fictitious name -- If the covered entity elects to transfer ownership of a fictitious name to another covered entity, the amendment shall contain the name of the covered entity or non-covered entity to which the fictitious name is being transferred and the street address where the business will be conducted under the fictitious name.

Cancellation of registration of fictitious name - A covered entity of record of a fictitious name may cancel the fictitious name by delivering to the secretary of state a cancellation of registration of a fictitious name, which must include but not be limited to the following information:

- (1) the complete registered fictitious name to be canceled;
- (2) the business entity identification number of the covered entity; and
- (3) the name and business mailing address of the registrant of record.

Cancellation or withdrawal of registration of fictitious business name upon dissolution of domestic covered entity or withdrawal of a foreign covered entity

- (1) If the only party of interest of a fictitious business name is a domestic corporation which has been dissolved, the secretary of state shall cancel the registration.
- (2) If the only party of interest of a fictitious business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the secretary of state shall cancel the registration.

Withdrawal of a fictitious name - A foreign covered entity that ceases doing business in this state under a fictitious name, shall file a statement with the secretary of state withdrawing such fictitious name. The statement shall be executed by a party duly authorized to sign on behalf of the covered entity.

Fee -- A covered entity shall pay a statement registration fee for each fictitious name registered with the secretary of state in an amount equal to \$35 to the secretary of state. All moneys shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit \$20 to the state general fund and \$15 to the information and services fee fund.

Effect of transacting business without certificate. No person or persons conducting or transacting business in this state without filing an effective statement of registration of a fictitious business name or having any interest therein may maintain any suit or action in any of the courts of this state under such name