

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. 398

As Amended by Senate Committee on
Judiciary

Brief*

SB 398, as amended, would amend the Kansas Corporation Code to prohibit a corporation from changing or eliminating the right to indemnification (protection against loss) or the right to advancement of expenses, arising under a provision of the articles of incorporation or the bylaws, after an act or omission has occurred. The bill would preserve the authority to change or eliminate the right to indemnification or the right to advancement of expenses after an act or omission has occurred if the articles of incorporation or a bylaw in effect at the time of the occurrence explicitly provided for such change or elimination.

Background

The Kansas Corporation Code is modeled after the Delaware Corporation Code. Recently, in *Schoon v. Troy Corp.*, 2008 WL 821666 (Del. Ch., March 28, 2008), the Delaware Court of Chancery enforced a bylaw amendment that eliminated the company's advancement of expenses obligation to former directors, even though the director seeking advancement had served under the company's prior bylaws and had left the board before the bylaw amendment. SB 398 is proposed by the Kansas Bar Association Corporate Counsel Section to prevent retroactive amendments to the articles of incorporation or the bylaws that deprive the right of indemnification or to advancement of expenses to a corporate officer.

*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>

The proponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was a representative of the Kansas Bar Association.

There was no testimony in opposition to the bill in the Senate Committee hearing.

The Senate Committee made a technical amendment to change "certificate" of incorporation to "articles" of incorporation.

According to the fiscal note on the bill, as introduced, passage of the bill would not have a fiscal effect on the state.