

3
4 **SENATE BILL No. 38**

5
6 By Committee on Judiciary

7
8 1-21
9

10 AN ACT concerning business entities; relating to annual report; filing of
11 certain documents; franchise tax; business activities; amending K.S.A.
12 56-1a156 and 56-1a502 and K.S.A. 2002 Supp. 17-2036, 17-7678, 17-
13 76,121, 17-76,139, 56-1a606, 56-1a607, 56a-1201 and 56a-1202 and
14 repealing the existing sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2002 Supp. 17-2036 is hereby amended to read as
18 follows: 17-2036. (a) Every business trust shall make an annual report in
19 writing to the secretary of state, showing its financial condition at the
20 close of business on the last day of its tax period under the Kansas income
21 tax act next preceding the date of filing, but if a business trust's tax period
22 is other than the calendar year, it shall give notice thereof to the secretary
23 of state prior to December 31 of the year it commences such tax period.
24 The reports shall be made on forms provided by the secretary of state
25 and shall be filed at the time prescribed by law for filing the business
26 trust's annual Kansas income tax return, except that if any such business
27 trust shall receive an extension of time for filing its annual income tax
28 return from the internal revenue service or pursuant to subsection (c) of
29 K.S.A. 79-3221, and amendments thereto, the time for filing the report
30 hereunder shall be extended, correspondingly, upon filing with the sec-
31 retary of state a copy of the extension granted by the internal revenue
32 service or the director of taxation. The report shall contain the following:

33 ~~(a)~~ (1) Executed copies of all amendments to the instrument by which
34 the business trust was created, or to prior amendments thereto, which
35 have been adopted and have not theretofore been filed under K.S.A. 17-
36 2033, and amendments thereto, and accompanied by the fee prescribed
37 therein for each such amendment; *and*

38 ~~(b)~~ (2) a verified list of the names and addresses of its trustees as of
39 the end of its tax period; ~~and~~

40 ~~(c) a balance sheet as of the end of its tax period, certified by the~~
41 ~~trustee, fairly and truly reflecting its assets and liabilities and specifically~~
42 ~~setting out its corpus, and, in the case of a foreign business trust, fairly~~
43 ~~and truly reflecting an allocation of its moneys and other assets as between~~

1 ~~those located, used, or to be used in this state and those located, used or~~
2 ~~to be used elsewhere.~~

3 (b) (1) At the time of filing its annual report, the business trust shall
4 pay to the secretary of state an annual franchise tax in an amount equal
5 to ~~\$2~~ **\$1** for each \$1,000 of its corpus ~~as shown by its balance sheet~~, or,
6 in the case of a foreign business trust, in an amount equal to ~~\$2~~ **\$1** for
7 each \$1,000 of that portion of its corpus which is located in or which it
8 uses or intends to use in this state ~~as shown by its balance sheet~~, except
9 that in any case no such tax shall be less than \$40 nor more than \$5,000.

10 (2) The failure of any domestic or foreign business trust to file its
11 annual report and pay its annual franchise tax within 90 days from the
12 date on which they are due, as aforesaid, shall work a forfeiture of its
13 authority to transact business in this state and all of the remedies, pro-
14 cedures, and penalties specified in K.S.A. 17-7509 and 17-7510, and
15 amendments thereto, with respect to a corporation which fails to file its
16 annual report or pay its annual franchise tax within 90 days after they are
17 due, shall be applicable to such business trust.

18 (c) *When any business trust that is required to file an annual report*
19 *with the secretary of state, applies for an extension of time for filing its*
20 *annual income tax return with the internal revenue service, the time for*
21 *filing the annual report with the secretary of state shall be extended, cor-*
22 *respondingly, upon filing a copy of the application to income tax author-*
23 *ities with the secretary of state, prior to the due date of its annual report.*
24 *All such copies of applications for extension of the time for filing income*
25 *tax returns shall be maintained by the secretary of state in a confidential*
26 *file and shall not be disclosed to any person except as authorized pursuant*
27 *to the provisions of K.S.A. 79-3234 and amendments thereto, a proper*
28 *judicial order, and subsection (d). All copies of such applications shall be*
29 *preserved for one year and until the secretary of state orders that the*
30 *copies are to be destroyed.*

31 (d) *A copy of such application shall be open to inspection by or dis-*
32 *closure to any person designated by resolution of the trustees of the busi-*
33 *ness trust.*

34 Sec. 2. K.S.A. 2002 Supp. 17-7678 is hereby amended to read as
35 follows: 17-7678. (a) The original signed copy, ~~together with a duplicate~~
36 ~~copy which may be either a signed or conformed copy~~, of articles of
37 organization or any certificate to be filed pursuant to this act, shall be
38 filed with the secretary of state. A person who executes a certificate,
39 statement or articles as an agent or fiduciary shall not be required to
40 exhibit evidence of the person's authority as a prerequisite to filing. Any
41 signature on any articles or certificate authorized to be filed with the
42 secretary of state under any provision of this act may be a facsimile, a
43 conformed signature or an electronically transmitted signature. Unless

1 the secretary of state finds that any filing does not conform to law, upon
2 receipt of all filing fees required by law, the secretary of state shall:

3 (1) Certify that such document has been filed in the secretary of
4 state's office by endorsing upon the original filing the word "filed" and
5 the date and hour of the filing; in the absence of actual fraud, this en-
6 dorsement is conclusive of the date and time of its filing;

7 (2) ~~file and index~~ record the endorsed document *in an electronic me-*
8 *diu*m; and

9 (3) return the ~~duplicate copy, similarly~~ *original document*, certified
10 *as a true copy of the recorded document*, to the person who filed it or
11 such person's representative.

12 (b) The articles of organization shall be amended as provided in a
13 certificate of amendment ~~(or judicial decree of amendment)~~ upon the
14 filing of the certificate of amendment ~~(or judicial decree of amendment)~~
15 with the secretary of state or upon the future effective date specified in
16 the certificate of amendment. An inaccuracy in the articles of organization
17 may be corrected by filing a certificate of correction with the secretary
18 of state as provided in K.S.A. 2002 Supp. 17-7683, and amendments
19 thereto. The articles of organization are canceled upon the issuance of a
20 certificate of cancellation ~~(or certificate of merger or consolidation where~~
21 ~~the limited liability company is not the surviving or resulting entity)~~ by
22 the secretary of state.

23 (c) The fee required by this act shall be paid at the time of the filing
24 of any articles of organization or any certificate to be filed pursuant to
25 this act.

26 (d) The fee required by this act shall be paid for a certified copy of
27 any paper on file pursuant to this act and the fee fixed pursuant to this
28 act shall be paid for each page copied.

29 (e) The secretary of state may prescribe a telefacsimile communica-
30 tion fee in addition to any filing fees to cover the cost of such services.
31 This fee must be paid prior to acceptance of a telefacsimile communi-
32 cation and shall be deposited into the information and copy service fee
33 fund.

34 (f) Upon filing the articles of organization of a limited liability com-
35 pany organized to exercise powers of a professional association or pro-
36 fessional corporation, the limited liability company shall file with the sec-
37 retary of state a certificate by the licensing body, as defined in K.S.A.
38 2002 Supp. 74-146, and amendments thereto, of the profession involved
39 that each of the members is duly licensed to practice that profession, and
40 that the proposed company name has been approved.

41 Sec. 3. K.S.A. 2002 Supp. 17-76,121 is hereby amended to read as
42 follows: 17-76,121. Before doing business in the state of Kansas, a foreign
43 limited liability company shall register with the secretary of state. In order

1 to register, a foreign limited liability company shall submit to the secretary
2 of state, together with payment of the fee required by this act, an original
3 copy executed by a member or manager, together with a duplicate copy,
4 of an application for registration as a foreign limited liability company,
5 setting forth:

6 (a) The name of the foreign limited liability company;

7 (b) the state or other jurisdiction or country where organized, the
8 date of its organization and a statement issued by an appropriate authority
9 in that jurisdiction *or by a third-party agent authorized by the secretary*
10 *of state* that the foreign limited liability company exists in good standing
11 under the laws of the jurisdiction of its organization;

12 (c) the nature of the business or purposes to be conducted or pro-
13 moted in the state of Kansas;

14 (d) the address of the registered office and the name and address of
15 the resident agent for service of process required to be maintained by
16 this act;

17 (e) an irrevocable written consent of the foreign limited liability com-
18 pany that actions may be commenced against it in the proper court of
19 any county where there is proper venue by the service of process on the
20 secretary of state as provided for in K.S.A. 60-304, and amendments
21 thereto, and stipulating and agreeing that such service shall be taken and
22 held, in all courts, to be as valid and binding as if due service had been
23 made upon the general partners of the foreign limited liability company;

24 (f) the name and business, residence or mailing address of each of
25 the members or, if managed by managers, the name and business, resi-
26 dence or mailing address of each of the managers; and

27 (g) the date on which the foreign limited liability company first did,
28 or intends to do, business in the state of Kansas.

29 A person shall not be deemed to be doing business in the state of
30 Kansas solely by reason of being a member or manager of a domestic
31 limited liability company or a foreign limited liability company.

32 Sec. 4. K.S.A. 2002 Supp. 17-76,139 is hereby amended to read as
33 follows: 17-76,139. (a) Every limited liability company organized under
34 the laws of this state shall make an annual report in writing to the secretary
35 of state, stating the prescribed information concerning the limited liability
36 company at the close of business on the last day of its tax period next
37 preceding the date of filing. If the limited liability company's tax period
38 is other than the calendar year, it shall give notice of its different tax
39 period in writing to the secretary of state prior to December 31 of the
40 year it commences the different tax period. The annual report shall be
41 filed at the time prescribed by law for filing the limited liability company's
42 annual Kansas income tax return. If the limited liability company applies
43 for an extension of time for filing its annual income tax return under the

1 internal revenue code, the limited liability company shall also apply, not
2 more than 90 days after the due date of its annual report, to the secretary
3 of state for an extension of the time for filing its report and an extension
4 shall be granted for a period of time corresponding to that granted under
5 the internal revenue code. The application shall include a copy of the
6 application to income tax authorities. The annual report shall be made on
7 a form prescribed by the secretary of state. The report shall contain the
8 following information:

9 (1) The name of the limited liability company; and

10 (2) a list of the members owning at least 5% of the capital of the
11 company, with the post office address of each.

12 (b) Every foreign limited liability company shall make an annual re-
13 port in writing to the secretary of state, stating the prescribed information
14 concerning the limited liability company at the close of business on the
15 last day of its tax period next preceding the date of filing. If the limited
16 liability company's tax period is other than the calendar year, it shall give
17 notice in writing of its different tax period to the secretary of state prior
18 to December 31 of the year it commences the different tax period. The
19 annual report shall be filed at the time prescribed by law for filing the
20 limited liability company's annual Kansas income tax return. If the limited
21 liability company applies for an extension of time for filing its annual
22 income tax return under the internal revenue code, the limited liability
23 company also shall apply, not more than 90 days after the due date of its
24 annual report, to the secretary of state for an extension of the time for
25 filing its report and an extension shall be granted for a period of time
26 corresponding to that granted under the internal revenue code. The ap-
27 plication shall include a copy of the application to income tax authorities.
28 The annual report shall be made on a form prescribed by the secretary
29 of state. The report shall contain the name of the limited liability
30 company.

31 (c) The annual report required by this section shall be signed by a
32 member of the limited liability company and forwarded to the secretary
33 of state. At the time of filing the report, the limited liability company shall
34 pay to the secretary of state an annual franchise tax in an amount equal
35 to ~~\$2~~ **\$1** for each \$1,000 of the net capital accounts located in or used in
36 this state at the end of the preceding taxable year as required to be re-
37 ported on the federal partnership return of income, or for a one-member
38 LLC taxed as a sole proprietorship, ~~\$2~~ **\$1** for each \$1,000 of net book
39 value of the LLC as calculated on an income tax basis located in or used
40 in this state at the end of the preceding taxable year, ~~except that~~ *minus*
41 *the amount of equity owned in any subsidiary entity reported on the*
42 *subsidiary entity's annual report. For purposes of this section, "subsidi-*
43 *ary" means an entity in which a limited liability company holds more*

1 *than 50% ownership.* No annual tax shall be less than \$40 or more than
2 \$5,000. The amount of any such franchise tax paid by the limited liability
3 company to the secretary as provided by this subsection shall not be dis-
4 closed by the secretary.

5 (d) The provisions of K.S.A. 17-7509, and amendments thereto, re-
6 lating to penalties for failure of a corporation to file an annual report or
7 pay the required franchise tax, and the provisions of subsection (a) of
8 K.S.A. 17-7510 and amendments thereto, relating to penalties for failure
9 of a corporation to file an annual report or pay the required franchise tax,
10 shall be applicable to the articles of organization of any domestic limited
11 liability company or to the authority of any foreign limited liability com-
12 pany which fails to file its annual report or pay the franchise tax within
13 90 days of the time prescribed in this section for filing and paying the
14 same. Whenever the articles of organization of a domestic limited liability
15 company or the authority of any foreign limited liability company are
16 forfeited for failure to file an annual report or to pay the required fran-
17 chise tax, the domestic limited liability company or the authority of a
18 foreign limited liability company may be reinstated by filing a certificate
19 of reinstatement, in the manner and form to be prescribed by the sec-
20 retary of state and paying to the secretary of state all fees and taxes,
21 including any penalties thereon, due to the state. The fee for filing a
22 certificate of reinstatement shall be the same as that prescribed by K.S.A.
23 17-7506, and amendments thereto, for filing a certificate of extension,
24 restoration, renewal or revival of a corporation's articles of incorporation.

25 (e) When reinstatement is effective, it relates back to and takes effect
26 as of the effective date of the forfeiture and the company may resume its
27 business as if the forfeiture had never occurred.

28 (f) No limited liability company shall be required to file its first annual
29 report under this act, or pay any annual franchise tax required to accom-
30 pany such report, unless such limited liability company has filed its articles
31 of organization or application for authority at least six months prior to the
32 last day of its tax period. If any limited liability company files with the
33 secretary of state a notice of change in its tax period and the next annual
34 report filed by such limited liability company subsequent to such notice
35 is based on a tax period of less than 12 months, the annual tax liability
36 shall be determined by multiplying the annual franchise tax liability for
37 such year by a fraction, the numerator of which is the number of months
38 or any portion thereof covered by the annual report and the denominator
39 of which is 12, except that the tax shall not be less than \$40.

40 (g) *When any limited liability company that is required to file an*
41 *annual report with the secretary of state applies for an extension of time*
42 *for filing its annual income tax return with the internal revenue service,*
43 *the time for filing the annual report with the secretary of state shall be*

1 *extended, correspondingly, upon filing a copy of the application to income*
2 *tax authorities with the secretary of state, prior to the due date of its*
3 *annual report. All such copies of applications for extension of the time for*
4 *filing income tax returns filed shall be maintained by the secretary of state*
5 *in a confidential file and shall not be disclosed to any person except as*
6 *authorized pursuant to the provisions of K.S.A. 79-3234 and amendments*
7 *thereto, a proper judicial order, or subsection (h). All copies of such ap-*
8 *plications shall be preserved for one year and thereafter until the secretary*
9 *of state orders that they be destroyed.*

10 *(h) A copy of such application shall be open to inspection by or dis-*
11 *closure to any person who was a member of such limited liability company*
12 *during any part of the period covered by the extension.*

13 Sec. 5. K.S.A. 56-1a156 is hereby amended to read as follows: 56-
14 1a156. (a) The original signed copy, ~~together with a duplicate copy which~~
15 ~~may be either a signed or conformed copy,~~ of the certificate of limited
16 partnership, any certificates of amendment or cancellation and any judi-
17 cial decree of amendment or cancellation shall be delivered to the sec-
18 retary of state. A person who executes a certificate as an agent or fiduciary
19 shall not be required to exhibit evidence of the person's authority as a
20 prerequisite to filing. Unless the secretary of state finds that any certifi-
21 cate does not conform to law, upon receipt of all filing fees required by
22 law, the secretary of state shall:

23 (1) Certify that the certificate of limited partnership, certificate of
24 amendment, certificate of cancellation or judicial decree of amendment
25 or cancellation has been filed in the secretary of state's office by endorsing
26 upon the original certificate the word "Filed" and the date and hour of
27 the filing; in the absence of actual fraud this endorsement is conclusive
28 of the date and time of its filing;

29 (2) ~~file and index~~ record the endorsed certificate *in an electronic me-*
30 *diu*m; and

31 (3) return the ~~duplicate copy, similarly~~ original document certified as
32 *a true copy of the recorded document*, to the person who filed it or that
33 person's representative.

34 (b) The certificate of limited partnership shall be amended as pro-
35 vided in a certificate of amendment or decree of amendment upon the
36 filing of the certificate of amendment or judicial decree of amendment
37 in the office of the secretary of state or upon the future effective date
38 specified in the certificate of amendment or judicial decree of amend-
39 ment. The certificate of limited partnership is canceled upon the filing of
40 a certificate of cancellation or a judicial decree of amendment in the office
41 of the secretary of state, upon the future effective date specified in the
42 certificate of cancellation or a judicial decree or as specified in this act.

43 (c) The fee required by K.S.A. 56-1a605, *and amendments thereto*,

1 shall be paid at the time of the filing of a certificate of limited partnership,
2 a certificate of amendment or a certificate of cancellation.

3 (d) The fee required by K.S.A. 56-1a605, *and amendments thereto*,
4 shall be paid for a certified copy of any paper on file pursuant to this act,
5 and the fee fixed pursuant to K.S.A. 56-1a605, *and amendments thereto*,
6 shall be paid for each page copied.

7 Sec. 6. K.S.A. 56-1a502 is hereby amended to read as follows: 56-
8 1a502. Before doing business in the state of Kansas, a foreign limited
9 partnership shall register with the secretary of state. In order to register,
10 a foreign limited partnership shall submit to the secretary of state together
11 with payment of the fee required by K.S.A. 56-1a605 and amendments
12 thereto, an original copy executed by a general partner, together with a
13 duplicate copy, of an application for registration as a foreign limited part-
14 nership, setting forth:

15 (a) The name of the foreign limited partnership;

16 (b) the state or other jurisdiction or country where organized, the
17 date of its organization and a statement issued by an appropriate authority
18 in that jurisdiction *or by a third-party agent authorized by the secretary*
19 *of state* that the foreign limited partnership exists in good standing under
20 the laws of the jurisdiction of its organization;

21 (c) the nature of the business or purposes to be conducted or pro-
22 moted in the state of Kansas;

23 (d) the address of the registered office and the name and address of
24 the resident agent for service of process required to be maintained by
25 subsection (b) of K.S.A. 56-1a504 and amendments thereto;

26 (e) an irrevocable written consent of the foreign limited partnership
27 that actions may be commenced against it in the proper court of any
28 county where there is proper venue by the service of process on the
29 secretary of state as provided for in K.S.A. 60-304 and amendments
30 thereto and stipulating and agreeing that such service shall be taken and
31 held, in all courts, to be as valid and binding as if due service had been
32 made upon the general partners of the foreign limited partnership;

33 (f) the name and business, residence or mailing address of each of
34 the general partners; and

35 (g) the date on which the foreign limited partnership first did, or
36 intends to do, business in the state of Kansas.

37 Sec. 7. K.S.A. 2002 Supp. 56-1a606 is hereby amended to read as
38 follows: 56-1a606. (a) Every limited partnership organized under the laws
39 of this state shall make an annual report in writing to the secretary of
40 state, stating the prescribed information concerning the limited partner-
41 ship at the close of business on the last day of its tax period next preceding
42 the date of filing. If the limited partnership's tax period is other than the
43 calendar year, it shall give notice of its different tax period to the secretary

1 of state prior to December 31 of the year it commences the different tax
2 period. The annual report shall be filed at the time prescribed by law for
3 filing the limited partnership's annual Kansas income tax return. If the
4 limited partnership applies for an extension of time for filing its annual
5 income tax return under the internal revenue code or under K.S.A. 79-
6 3221 and amendments thereto, the limited partnership shall also apply,
7 not more than 90 days after the due date of its annual report, to the
8 secretary of state for an extension of the time for filing its report and an
9 extension shall be granted for a period of time corresponding to that
10 granted under the internal revenue code or K.S.A. 79-3221 and amend-
11 ments thereto. The application shall include a copy of the application to
12 income tax authorities.

13 (b) The annual report shall be made on a form prescribed by the
14 secretary of state. The report shall contain the following information:

15 (1) The name of the limited partnership; and

16 (2) a list of the partners owning at least 5% of the capital of the
17 partnership, with the post office address of each.

18 (c) Every limited partnership subject to the provisions of this section
19 which is a limited corporate partnership, as defined in K.S.A. 17-5903
20 and amendments thereto, and which holds agricultural land, as defined
21 in K.S.A. 17-5903 and amendments thereto, within this state shall show
22 the following additional information on the report:

23 (1) The number of acres and ~~location, listed by section, range, town-~~
24 ~~ship and~~ county of each lot, tract or parcel of agricultural land in this state
25 owned or leased by the limited partnership; and

26 (2) whether any of the agricultural land held and reported under sub-
27 section (c)(1) was acquired after July 1, 1981.

28 (d) The annual report shall be signed by the general partner or part-
29 ners of the limited partnership, sworn to before an officer duly authorized
30 to administer oaths and forwarded to the secretary of state. At the time
31 of filing the report, the limited partnership shall pay to the secretary of
32 state an annual franchise tax in an amount equal to ~~\$2~~ **\$1** for each \$1,000
33 of the partners' net capital accounts located in or used in this state at the
34 end of the preceding taxable year as required to be reported on the fed-
35 eral partnership return of income, ~~except that~~ *minus the amount of equity*
36 *owned in any subsidiary entity reported on the subsidiary entity's annual*
37 *report. For purposes of this subsection, "subsidiary" means an entity in*
38 *which a limited partnership holds more than 50% ownership. No annual*
39 *tax shall be less than \$40 or more than \$5,000. The amount of any such*
40 *franchise tax paid by the limited partnership to the secretary as provided*
41 *by this subsection shall not be disclosed by the secretary.*

42 (e) The provisions of K.S.A. 17-7509 and amendments thereto, re-
43 lating to penalties for failure of a corporation to file an annual report or

1 pay the required franchise tax, and the provisions of subsection (a) of
2 K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a do-
3 mestic corporation's articles of incorporation for failure to file an annual
4 report or pay the required franchise tax, shall be applicable to the certif-
5 icate of partnership of any limited partnership which fails to file its annual
6 report or pay the franchise tax within 90 days of the time prescribed in
7 this section for filing and paying the same. Whenever the certificate of
8 partnership of a limited partnership is forfeited for failure to file an annual
9 report or to pay the required franchise tax, the limited partnership may
10 be reinstated by filing a certificate of reinstatement, in the manner and
11 form to be prescribed by the secretary of state and paying to the secretary
12 of state all fees and taxes, including any penalties thereon, due to the
13 state. The fee for filing a certificate of reinstatement shall be the same as
14 that prescribed by K.S.A. 17-7506 and amendments thereto for filing a
15 certificate of extension, restoration, renewal or revival of a corporation's
16 articles of incorporation.

17 Sec. 8. K.S.A. 2002 Supp. 56-1a607 is hereby amended to read as
18 follows: 56-1a607. (a) Every foreign limited partnership shall make an
19 annual report in writing to the secretary of state, stating the prescribed
20 information concerning the limited partnership at the close of business
21 on the last day of its tax period next preceding the date of filing. If the
22 limited partnership's tax period is other than the calendar year, it shall
23 give notice of its different tax period to the secretary of state prior to
24 December 31 of the year it commences the different tax period. The
25 annual report shall be filed at the time prescribed by law for filing the
26 limited partnership's annual Kansas income tax return. If the limited part-
27 nership applies for an extension of time for filing its annual income tax
28 return under the internal revenue code or under K.S.A. 79-3221 and
29 amendments thereto, the limited partnership shall also apply, not more
30 than 90 days after the due date of its annual report, to the secretary of
31 state for an extension of the time for filing its report and an extension
32 shall be granted for a period of time corresponding to that granted under
33 the internal revenue code or K.S.A. 79-3221 and amendments thereto.
34 The application shall include a copy of the application to income tax
35 authorities.

36 (b) The annual report shall be made on a form prescribed by the
37 secretary of state. The report shall contain the name of the limited
38 partnership.

39 (c) Every foreign limited partnership subject to the provisions of this
40 section which is a limited corporate partnership, as defined in K.S.A. 17-
41 5903 and amendments thereto, and which holds agricultural land, as de-
42 fined in K.S.A. 17-5903 and amendments thereto, within this state shall
43 show the following additional information on the report:

1 (1) The number of acres and ~~location, listed by section, range, town-~~
2 ~~ship and~~ county of agricultural land in this state owned or leased by the
3 limited partnership; and

4 (2) whether any of the agricultural land held and reported under sub-
5 section (c)(1) was acquired after July 1, 1981.

6 (d) The annual report shall be signed by the general partner or part-
7 ners of the limited partnership, sworn to before an officer duly authorized
8 to administer oaths and forwarded to the secretary of state. At the time
9 of filing the report, the foreign limited partnership shall pay to the sec-
10 retary of state an annual franchise tax in an amount equal to ~~\$2~~ \$1 for
11 each \$1,000 of the partners' net capital accounts located in or used in this
12 state at the end of the preceding taxable year as required to be reported
13 on the federal partnership return of income, ~~except that~~ *minus the*
14 *amount of equity owned in any subsidiary entity reported on the subsid-*
15 *ary entity's annual report. For purposes of this subsection, "subsidiary"*
16 *means an entity in which a foreign limited partnership holds more than*
17 *50% ownership. No annual tax shall be less than \$40 or more than \$5,000.*
18 The amount of any such franchise tax paid by the limited partnership to
19 the secretary as provided by this subsection shall not be disclosed by the
20 secretary.

21 (e) The provisions of K.S.A. 17-7509 and amendments thereto, relat-
22 ing to penalties for failure of a corporation to file an annual report or
23 pay the required franchise tax, and the provisions of subsection (b) of
24 K.S.A. 17-7510 and amendments thereto, relating to forfeiture of a for-
25 eign corporation's authority to do business in this state for failure to file
26 an annual report or pay the required franchise tax, shall be applicable to
27 the authority of any foreign limited partnership which fails to file its an-
28 nual report or pay the franchise tax within 90 days of the time prescribed
29 in this section for filing and paying the same. Whenever the authority of
30 a foreign limited partnership to do business in this state is forfeited for
31 failure to file an annual report or to pay the required franchise tax, the
32 foreign limited partnership's authority to do business in this state may be
33 reinstated by filing a certificate of reinstatement, in the manner and form
34 to be prescribed by the secretary of state and paying to the secretary of
35 state all fees and taxes, including any penalties thereon, due to the state.
36 The fee for filing a certificate of reinstatement shall be the same as that
37 prescribed by K.S.A. 17-7506 and amendments thereto for filing a cer-
38 tificate of extension, restoration, renewal or revival of a corporation's ar-
39 ticles of incorporation.

40 Sec. 9. K.S.A. 2002 Supp. 56a-1201 is hereby amended to read as
41 follows: 56a-1201. (a) Every limited liability partnership organized under
42 the laws of this state shall make an annual report in writing to the secretary
43 of state, stating the prescribed information concerning the limited liability

1 partnership at the close of business on the last day of its tax period next
2 preceding the date of filing. If the limited liability partnership's tax period
3 is other than the calendar year, it shall give notice of its different tax
4 period in writing to the secretary of state prior to December 31 of the
5 year it commences the different tax period. The annual report shall be
6 filed at the time prescribed by law for filing the limited liability partner-
7 ship's annual Kansas income tax return. If the limited liability partnership
8 applies for an extension of time for filing its annual income tax return
9 under the internal revenue code, the limited liability partnership shall
10 also apply, not more than 90 days after the due date of its annual report,
11 to the secretary of state for an extension of the time for filing its report
12 and an extension shall be granted for a period of time corresponding to
13 that granted under the internal revenue code. The application shall in-
14 clude a copy of the application to income tax authorities.

15 (b) The annual report shall be made on a form prescribed by the
16 secretary of state. The report shall contain the following information:

17 (1) The name of the limited liability partnership; and

18 (2) a list of the partners owning at least 5% of the capital of the
19 partnership, with the post office address of each.

20 (c) The annual report shall be signed by a partner of the limited
21 liability partnership and forwarded to the secretary of state. At the time
22 of filing the report, the limited liability partnership shall pay to the sec-
23 retary of state an annual franchise tax in an amount equal to ~~\$2~~ **\$1** for
24 each \$1,000 of the net capital accounts located in or used in this state at
25 the end of the preceding taxable year as required to be reported on the
26 federal partnership return of income, ~~except that~~ *minus the amount of*
27 *equity owned in any subsidiary entity reported on the subsidiary entity's*
28 *annual report. For purposes of this section "subsidiary" means an entity*
29 *in which a limited liability partnership holds more than 50% ownership.*
30 No annual tax shall be less than \$40 or more than \$5,000. The amount
31 of any such franchise tax paid by the limited liability partnership to the
32 secretary as provided by this subsection shall not be disclosed by the
33 secretary.

34 (d) The provisions of K.S.A. 17-7509, and amendments thereto, re-
35 lating to penalties for failure of a corporation to file an annual report or
36 pay the required franchise tax, and the provisions of subsection (a) of
37 K.S.A. 17-7510 and amendments thereto, relating to penalties for failure
38 of a corporation to file an annual report or pay the required franchise tax,
39 shall be applicable to the statement of qualification of any limited liability
40 partnership which fails to file its annual report or pay the franchise tax
41 within 90 days of the time prescribed in this section for filing and paying
42 the same. Whenever the statement of qualification of a limited liability
43 partnership is forfeited for failure to file an annual report or to pay the

1 required franchise tax, the limited liability partnership may be reinstated
2 by filing a certificate of reinstatement, in the manner and form to be
3 prescribed by the secretary of state and paying to the secretary of state
4 all fees and taxes, including any penalties thereon, due to the state. The
5 fee for filing a certificate of reinstatement shall be the same as that pre-
6 scribed by K.S.A. 17-7506, and amendments thereto, for filing a certifi-
7 cate of extension, restoration, renewal or revival of a corporation's articles
8 of incorporation.

9 Sec. 10. K.S.A. 2002 Supp. 56a-1202 is hereby amended to read as
10 follows: 56a-1202. (a) Every foreign limited liability partnership shall
11 make an annual report in writing to the secretary of state, stating the
12 prescribed information concerning the foreign limited liability partner-
13 ship at the close of business on the last day of its tax period next preceding
14 the date of filing. If the foreign limited liability partnership's tax period
15 is other than the calendar year, it shall give notice in writing of its different
16 tax period to the secretary of state prior to December 31 of the year it
17 commences the different tax period. The annual report shall be filed at
18 the time prescribed by law for filing the foreign limited liability partner-
19 ship's annual Kansas income tax return. If the foreign limited liability
20 partnership applies for an extension of time for filing its annual income
21 tax return under the internal revenue code, the foreign limited liability
22 partnership shall also apply, not more than 90 days after the due date of
23 its annual report, to the secretary of state for an extension of the time for
24 filing its report and an extension shall be granted for a period of time
25 corresponding to that granted under the internal revenue code. The ap-
26 plication shall include a copy of the application to income tax authorities.

27 (b) The annual report shall be made on a form prescribed by the
28 secretary of state. The report shall contain the name of the foreign limited
29 liability partnership.

30 (c) The annual report shall be signed by a partner of the foreign
31 limited liability partnership and forwarded to the secretary of state. At
32 the time of filing the report, the foreign limited liability partnership shall
33 pay to the secretary of state an annual franchise tax in an amount equal
34 to ~~\$2~~ **\$1** for each \$1,000 of the net capital accounts located in or used in
35 this state at the end of the preceding taxable year as required to be re-
36 ported on the federal partnership return of income, ~~except that~~ *minus*
37 *the amount of equity owned in any subsidiary entity reported on the*
38 *subsidiary entity's annual report. For purposes of this subsection, "sub-*
39 *subsidiary" means an entity in which a foreign limited liability partnership*
40 *holds more than 50% ownership. No annual tax shall be less than \$40 or*
41 *more than \$5,000. The amount of any such franchise tax paid by the*
42 *foreign limited liability partnership to the secretary as provided by this*
43 *subsection shall not be disclosed by the secretary.*

1 (d) The provisions of K.S.A. 17-7509, and amendments thereto, re-
2 lating to penalties for failure of a corporation to file an annual report or
3 pay the required franchise tax, and the provisions of subsection (a) of
4 K.S.A. 17-7510, and amendments thereto, relating to penalties for failure
5 of a corporation to file an annual report or pay the required franchise tax,
6 shall be applicable to the statement of foreign qualification of any foreign
7 limited liability partnership which fails to file its annual report or pay the
8 franchise tax within 90 days of the time prescribed in this section for filing
9 and paying the same. Whenever the statement of foreign qualification of
10 a foreign limited liability partnership is forfeited for failure to file an
11 annual report or to pay the required franchise tax, the statement of foreign
12 qualification of the foreign limited liability partnership may be reinstated
13 by filing a certificate of reinstatement, in the manner and form to be
14 prescribed by the secretary of state and paying to the secretary of state
15 all fees and taxes, including any penalties thereon, due to the state. The
16 fee for filing a certificate of reinstatement shall be the same as that pre-
17 scribed by K.S.A. 17-7506, and amendments thereto, for filing a certifi-
18 cate of extension, restoration, renewal or revival of a corporation's articles
19 of incorporation.

20 New Sec. 11. (a) Activities of a foreign limited liability company
21 which do not constitute doing business within the meaning of K.S.A. 2002
22 Supp. 17-76,121, and amendments thereto, include:

- 23 (1) Maintaining, defending or settling an action or proceeding;
 - 24 (2) holding meetings or carrying on any other activity concerning its
25 internal affairs;
 - 26 (3) maintaining bank accounts;
 - 27 (4) maintaining offices or agencies for the transfer, exchange and reg-
28 istration of the company's own securities or maintaining trustees or de-
29 positories with respect to those securities;
 - 30 (5) selling through independent contractors;
 - 31 (6) soliciting or obtaining orders, whether by mail or through em-
32 ployees or agents or otherwise, if the orders require acceptance outside
33 this state before they become contracts;
 - 34 (7) creating or acquiring indebtedness, mortgages or security inter-
35 ests in real or personal property;
 - 36 (8) securing or collecting debts or foreclosing mortgages or other se-
37 curity interests in property securing the debts, and holding, protecting
38 and maintaining property so acquired;
 - 39 (9) conducting an isolated transaction that is completed within 30
40 days and is not one in the course of similar transactions of like nature;
41 and
 - 42 (10) transacting business in interstate commerce.
- 43 (b) The ownership in this state of income producing real property or

1 tangible personal property, other than property excluded under subsec-
2 tion (a), constitutes doing business in this state.

3 (c) This section does not apply in determining the contacts or activ-
4 ities that may subject a foreign limited liability company to service of
5 process, taxation or regulation under any other law of this state.

6 (d) The provisions of this section shall be part of and supplemental
7 to the Kansas revised limited liability company act.

8 New Sec. 12. (a) When any limited partnership that is required to
9 file an annual report with the secretary of state, shall apply for an exten-
10 sion of time for filing its annual income tax return with the internal rev-
11 enue service, the time for filing the annual report with the secretary of
12 state shall be extended, correspondingly, upon filing a copy of the appli-
13 cation to income tax authorities with the secretary of state, prior to the
14 due date of its annual report. All such copies of applications for extension
15 of the time for filing income tax returns shall be maintained by the sec-
16 retary of state in a confidential file and shall not be disclosed to any person
17 except as authorized pursuant to the provisions of K.S.A. 79-3234 and
18 amendments thereto, a proper judicial order, and subsection (b). All cop-
19 ies of such applications shall be preserved for one year and thereafter
20 until the secretary of state orders that they be destroyed. Nothing in this
21 section shall be deemed to prohibit the secretary of state from issuing
22 any document described in K.S.A. 56-1a605, and amendments thereto,
23 concerning a limited partnership.

24 (b) A copy of such application shall be open to inspection by or dis-
25 closure to any person who was a partner of the limited partnership during
26 any part of the period covered by the extension.

27 (c) The provisions of this section shall be part of and supplemental
28 to the revised uniform limited partnership act.

29 New Sec. 13. (a) Activities of a foreign limited partnership which do
30 not constitute doing business within the meaning of K.S.A. 56-1a502, and
31 amendments thereto, include:

- 32 (1) Maintaining, defending or settling an action or proceeding;
- 33 (2) holding meetings or carrying on any other activity concerning its
34 internal affairs;
- 35 (3) maintaining bank accounts;
- 36 (4) maintaining offices or agencies for the transfer, exchange and reg-
37 istration of the limited partnership's own securities or maintaining trus-
38 tees or depositories with respect to those securities;
- 39 (5) selling through independent contractors;
- 40 (6) soliciting or obtaining orders, whether by mail or through em-
41 ployees or agents or otherwise, if the orders require acceptance outside
42 this state before they become contracts;
- 43 (7) creating or acquiring indebtedness, mortgages or security inter-

1 ests in real or personal property;

2 (8) securing or collecting debts or foreclosing mortgages or other se-
3 curity interests in property securing the debts, and holding, protecting
4 and maintaining property so acquired;

5 (9) conducting an isolated transaction that is completed within 30
6 days and is not one in the course of similar transactions of like nature;
7 and

8 (10) transacting business in interstate commerce.

9 (b) The ownership in this state of income producing real property or
10 tangible personal property, other than property excluded under subsec-
11 tion (a), constitutes doing business in this state.

12 (c) This section does not apply in determining the contacts or activ-
13 ities that may subject a foreign limited partnership to service of process,
14 taxation or regulation under any other law of this state.

15 (d) The provisions of this section shall be part of and supplemental
16 to the revised uniform limited partnership act.

17 Sec. 14. K.S.A. 56-1a156 and 56-1a502 and K.S.A. 2002 Supp. 17-
18 2036, 17-7678, 17-76,121, 17-76,139, 56-1a606, 56-1a607, 56a-1201 and
19 56a-1202 are hereby repealed.

20 Sec. 15. This act shall take effect and be in force from and after its
21 publication in the statute book.

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