



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Susan Humphries, Chair
And Members of the House Judiciary Committee

**FROM: Bill Quick, Chair – Kansas Revised Limited Liability Company Act Study
Committee of the Kansas Bar Association**

**SUBJECT HB 2371 - Amending the Kansas revised limited liability company act, the
business entity transactions act and the business entity standard treatment
act.**

DATE: February 11, 2025

Chairman Humphries and members of the House Judiciary Committee, my name is William E. Quick, I am an attorney with Polsinelli, and the chair of the Kansas Revised Limited Liability Company Act Study Committee of the Kansas Bar Association. The KBA study committee members include William Matthews, Foulston Siefkin; Clay Barker & Jameson Beckner, Kansas Secretary of State's Office, Professor Amy Westbrook, Washburn Law School; Rebecca Miller, Central National Bank and Professor Alex Platt, University of Kansas Law School. I appreciate the opportunity to testify on HB 2371 - Amending the Kansas revised limited liability company act, the business entity transactions act and the business entity standard treatment act.

The Importance of Delaware Business Law to Kansas

One of our committee's key motivations was to update the Kansas Revised Limited Liability Company Act with recent changes to the Delaware Limited Liability Company Act and, thereby, continue Kansas's long tradition of modelling our business entity laws after those of Delaware.

The State of Delaware is the acknowledged gold standard on business entity law, as evidenced by the number and size of corporations and limited liability companies (LLCs) formed there. Delaware has a special court, the Court of Chancery, that only hears business cases. As a result, its judges have specialized expertise in interpreting its statutes and in deciding business cases not controlled by statute. The Court of Chancery produces a high volume of excellent quality decisions each year on a great variety of issues, which has resulted in a robust and comprehensive body of precedent. Furthermore, the

Delaware legislature is constantly evaluating the case law results, reviewing new business developments, monitoring changes in federal law (e.g., the federal securities laws), and taking input on business entity issues. Nearly every session, the Delaware legislature makes modifications to its corporation and LLC acts with the goal of making certain they are on the cutting edge of learning in this area.

By modeling its corporation and LLC statutes on those in effect in Delaware, Kansas and its business and legal communities have been able to benefit greatly. Not only is our statutory law consistent with that of the world's leader, but our courts have come to recognize the tremendous value of a rich body of judicial precedent based on those statutes. Our committee seeks to continue a trend that has been an integral part of Kansas law for over 50 years.

Significant Provisions

In addition to certain ministerial clarifications, corrections and cross reference adjustments found throughout the proposed Amendments, and certain clerical “fixes” made at the request of the Office of the Kansas Secretary of State, the following specific revisions of note were included:

1. New defined terms. (**Section 17-7663**) Two new defined terms were added to the Act:

“Document” means (i) any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments and (ii) an electronic transmission.

“Electronic transmission” means any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases, including one or more distributed electronic networks or databases, that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

These terms were added to address a wholistic approach to electronic records throughout the Act (as opposed to traditional mere “paper” records).

The term “document” has historically been included throughout the Act without an accompanying implicitly “understood” definition. The new definition is not designed to alter that usage of the term in the Act, but instead to make clear that non-paper instruments are to be included within the term “document’s” meaning.

The term “electronic transmission” is an addition to the existing lexicon, and now appears in the new definition of “document” (discussed above), as well as in Sections 17-7679a (Document form, signature and delivery), **17-7687(d)** (Classes; voting; meetings of

members; amendment of operating agreement), **17-7695(d)** (Classes and voting; meetings of managers), **17-76,103a**. (Subscription irrevocable), and **17-78-601(a)(7)** (Filing requirements; execution). Please note that due to the inclusion of a new definition for the term “electronic transmission” in **Section 17-7663**, the separate, independent definition of that term in Sections 17-7687(d) and 17-7695(d) were removed.

Further, a new section (Document form, signature and delivery) was newly added to address various electronic transmission and electronic filing scenarios, as well as interface with the Kansas uniform electronic transactions act (at K.S.A 16-601 et seq.) and certain federal electronic signatures laws.

2. Series limited liability companies. Numerous revisions were made in the Act to address certain interpretive aspects of the series limited liability company as contemplated under Delaware law. These include:

Sections 17-7663 (Definitions of “Manager,” “Member,” “Operating Agreement”), **17-76,143(g)** (Series limited liability company – pertaining to series dissolutions), **17-76,143a** (Merger or consolidation of one or more series), **17-76,146(c)** (Reinstatement of canceled or forfeited articles of organization or authority to do business).

It bears note that Kansas, at its series limited liability company inception, took a fundamentally different approach to series limited liability companies than did Delaware (at that time). Interestingly, Delaware has since come around to embrace many of the attributes contained in the Kansas series limited liability company model, through Delaware’s creation of a new “*registered series*” concept (operating in conjunction with its continuing use of its historic “*protected series*” model). Delaware’s registered series concept closely tracks with Kansas’s unitary notion of a series limited liability company, and, as such, consideration of Delaware’s evolving approach and interpretation of its *registered series* concept (but not its *protected series* concept) provided instructive in the Committee’s review and updating to the Act.

3. Void or voidable actions may be ratified. Certain void or voidable actions of a limited liability company may be ratified by the members, managers or others whose approval would be required under the operating agreement. (**Section 17-7668(j)**).
4. Mandatory indemnification. Several changes are made to the mandatory indemnification provision, **Section 17-7670(b)**. We have made revisions to conform to recent changes made to the mandatory indemnification provision of the Kansas General Corporation Code, namely limiting its application only to members, managers, and officers and not to employees and agents, and defining which officers are entitled to mandatory indemnification. We have removed mandatory indemnification of members as plaintiffs, which was added in 2014 but does not correspond to any mandatory indemnification scheme in Delaware or other Kansas

law. Finally, consistent with the principles of freedom of contract upon which the KRLCA is based, we have stated that the operating may modify the mandatory indemnification provisions.

5. No statutory appraisal rights. **Section 17-7682** was revised from stating that an operating agreement may provide for contractual appraisal rights, to a statement that no statutory appraisal rights exist unless provided for in an operating agreement or other writing. This revision is notionally associated with the revision to mandatory indemnification discussed above.
6. Merger or consolidation clarification language. Several revisions were made to clarify the ambiguity in the merger and consolidation provisions contained in **Section 17-7681**.
7. Division of limited liability company. Several ambiguity clarifying and cross-reference correction revisions were made to the division provisions contained in **Section 17-7685a**. Additional clarification as to what may be contained in certificate of division was added in **Section 17-7685a(h)(2) through (6)**. Admission of a member of a division company was also added in **Section 17-7686(b)(4)**.
8. Records access. Clarification of the “information” that may be accessed in a records request was included in **Section 17-7690**.
9. Delegation of power and conflicts of interest. Elaboration on the scope of delegation of authority as it implicates conflicts of interest was included in **Section 17-7698**.
10. Irrevocable subscriptions. A new section was added that provides that if a subscription states that it is irrevocable, then it is irrevocable to the extent provided by the terms of the subscription. (**Section 17-76,103a**).
11. Cap on Secretary of State fees. **Section 17-76,136** was revised to provide a \$150 cap on certain fees assessed by the Secretary of State, permitting the Secretary of State to assess lesser fees, in its discretion.
12. Statutory Public Benefit Limited Liability Company. **Sections 17-76,148 and 17-76,149(a)** were revised to provide certain clarifying revisions pertaining to formation of statutory public benefit LLCs. **Section 17-76,150** was deleted.
13. Merger timing and amendment. **Sections 17-78-205, 17-78-305, 17-78-405 and 17-78-505** were revised to allow the filing of merger documents with the Secretary of State (with a post-filing effective date) prior to, but contingent upon future approval of the merger by the constituent parties. **Sections 17-78-206 and 17-78-306** were revised to expressly state that merger filings may amend and restate the public documents of the constituent parties in their entirety. These revisions were made to

address certain practical timing, logistics and documentation issues faced by parties in effecting merges.

14. Resident agents. **Section 17-7925** was revised to require domestic entities that serve as a resident agent to maintain their good standing with Kansas. **Section 17-7927** was revised to address the possible conversion or division of an entity that serves as a resident agent.

Thank you for your time and we stand ready for any questions from the committee.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 7,200 members include lawyers, judges, law students, and paralegals.
www.ksbar.org