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MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: March 5, 2025

Subject: Bill Brief for HB 2371 (As Amended by House Committee)

House Bill 2371 updates the Kansas revised limited liability company act, the business entity transactions act and the business entity standard treatment act and modifies provisions relating to series limited liability companies.

The bill creates two new sections to be added to the Kansas revised limited liability company act. New Section 1 provides that, with certain exceptions: (1) Any act or transaction contemplated or governed by the act or the operating agreement may be provided for in a document, and an electronic transmission is the equivalent of a written document; and (2) whenever the act or the operating agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. New Section 2 provides that for all purposes of the laws of the state of Kansas, a subscription for a limited liability company interest, whether submitted in writing, by means of electronic transmission or as otherwise permitted by applicable law, is irrevocable if the subscription states that such subscription is irrevocable to the extent provided by the terms of the subscription.

Sections 3 through 23 amend statutes in the Kansas revised limited liability company act. Section 3 amends K.S.A. 17-7662 to add sections 1 and 2 to the act. Section 4 amends K.S.A. 17-7663 to add definitions of "document" and "electronic transmission" and modify existing definitions of "manager", "member", and "operating agreement".

Section 5 amends K.S.A. 17-7668 by adding a new subsection (j) to provide that any act or transaction that may be taken by or in respect of a limited liability company (LLC) under the act or an operating agreement, but that is void or voidable when taken, may be ratified, or the failure to comply with any requirements of the operating agreement making such act or transaction void or voidable may be waived, by the members, managers or other persons whose approval

would be required under the operating agreement (1) for such act or transaction to be validly taken, or (2) to amend the operating agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver.

Section 6 amends K.S.A. 17-7670 to define "officer" for purposes of indemnification with respect to any act or omission occurring after June 30, 2025.

Section 7 amends K.S.A. 17-7681 regarding merger and consolidations provisions.

Section 8 amends K.S.A. 17-7682 to provide that there are no statutory appraisal rights, only those that are provided in an operating agreement or an agreement of merger or consolidation or a plan of division

Section 9 amends K.S.A. 17-7685a regarding division of an LLC, what may be included in a certificate of division, and what is required to be in a certificate of amendment of certificate of division.

Section 10 amends K.S.A. 17-7686 regarding admission as a member of an LLC in the case of a person being admitted as a member of a division company pursuant to a division approved in accordance with K.S.A. 17-7685a.

Section 11 amends K.S.A. 17-7687 and Section 13 amends K.S.A. 17-7695 to remove the definition of "electronic transmission" that the bill adds to K.S.A. 17-7663 (Section 4).

Section 12 amends K.S.A. 17-7690 relating to information maintained by an LLC and access to such information by members of the LLC.

Section 14 amends K.S.A. 17-7698 relating to the power and authority of members and managers to delegate rights, powers and duties to manage and control the business and affairs of an LLC in relation to a conflict of interest.

Section 15 amends K.S.A. 17-76,136 to provide that the current fee of \$150 for certain LLC filings with the secretary of state will be established by rules and regulations and not exceed \$150.

Section 16 amends K.S.A. 17-76,143 relating to series limited liability companies (establishment of one or more designated series of members, managers, limited liability company

interests or assets). The House Committee on Judiciary amended subsection (c) to provide that a series shall have the power and capacity to conduct business and exercise the power of a limited liability company under this article. The limited liability company and any of its series may elect to consolidate its operations as a single taxpayer to the extent required to file consolidated tax returns as permitted under applicable law and elect to be treated as a single business for the purposes of qualification or authorization to do business in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract. Additionally, an operating agreement may provide that any member or class or group of members have no ability to participate in the management or governance of a series while still being owners. The bill, as originally introduced, adds a new subsection (g) relating to dissolution. The House Committee on Judiciary added a subsection (h) to provide that an operating agreement may impose restrictions, duties and obligations on members of the limited liability company or any series thereof as a manner of internal governance, including (1) choice of law, forum selection or consent to personal jurisdiction, (2) capital contributions, (3) restrictions or conditions on the transfer of membership interests, (4) restrictive covenants, (5) fiduciary duties, and (6) restrictions, duties or obligations to or for the benefit of the limited liability company, other series thereof or their affiliates. Subsection (i) was added by the committee to provide that the wrongful transfer of property from a series to another series or the limited liability company as a whole with intent to hinder, delay or defraud creditors shall be subject to K.S.A. 33-102, the statute of frauds, making such transfer void.

Section 17 amends K.S.A. 17-76,143a relating to merger or consolidation of one or more series and the contents of the certificate of merger or consolidation of series.

Section 18 amends K.S.A. 17-76,145 relating to revocation of dissolution and persons whose vote, consent or approval is required.

Section 19 amends K.S.A. 17-76,146 relating to reinstatement of canceled or forfeited articles of organization or authority to do business by filing a certificate of reinstatement of limited liability company.

Sections 20 through 23 amend K.S.A. 17-76,148, 17-76,149, 17-76,151, and 17-76,152 relating to formation and operation of statutory public benefit limited liability companies. The bill

also repeals K.S.A. 17-76,150 relating to the vote, consent or approval requirements for certain actions by statutory public benefit limited liability companies.

Sections 24 through 29 amend statutes in the business entity transactions act related to certificates of merger, certificates of interest exchange, certificates of conversion, and certificates of domestication. Section 24 amends K.S.A. 17-78-205, Section 26 amends K.S.A. 17-78-305, Section 28 amends K.S.A. 17-78-405, and Section 29 amends K.S.A. 17-78-505 each related to merger documents filed with the secretary of state prior to approval of the merger. Section 25 amends K.S.A. 17-78-206 and Section 27 amends K.S.A. 17-78-306 to provide that merger filings may amend and restate public organic document entirely.

Sections 30 through 33 amend statutes in the business entity standard treatment act. Section 30 amends K.S.A. 17-7904 to include certificates of amendment to certificate of designation and certificates of merger or consolidation of series as documents related to LLCs that are filed with the secretary of state. Section 31 amends K.S.A. 17-7925 to require domestic entities that are resident agents for covered entities to be in good standing in this state. Section 32 amends K.S.A. 17-7927 to specify circumstances under which changes related to a resident agent shall be deemed a change of name of the person or entity acting as a resident agent. Section 33 amends K.S.A. 17-7929 concerning notice given to the covered entity when a resident agent files a certificate of resignation with the secretary of state.

The bill would take effect from and after publication in the statute book, July 1, 2025.