

HOUSE BILL No. 2355

By Committee on Judiciary

Requested by Representative L. Williams on behalf of the Kansas Chamber

2-7

1 AN ACT concerning limited liability companies; relating to series limited
2 liability companies; authorizing a limited liability company and any of
3 its series to elect to consolidate its operations as a single taxpayer and
4 elect to be treated as a single business for certain purposes; permitting
5 operating agreements to impose restrictions, duties and obligations on
6 members; specifying that wrongful transfer of property with intent to
7 hinder, delay or defraud creditors or to defraud shall be deemed void;
8 amending K.S.A. 17-76,143 and repealing the existing section.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 Section 1. K.S.A. 17-76,143 is hereby amended to read as follows:
12 17-76,143. (a) An operating agreement may establish or provide for the
13 establishment of one or more designated series of members, managers,
14 limited liability company interests or assets. If an operating agreement so
15 provides for the establishment or formation of one or more series, then a
16 series may be formed by complying with this section. Any such series may
17 have separate rights, powers or duties with respect to specified property or
18 obligations of the limited liability company or profits and losses associated
19 with specified property or obligations, and to the extent provided in the
20 operating agreement, any such series may have a separate business
21 purpose or investment objective. A series is formed by the filing of a
22 certificate of designation in the office of the secretary of state. Other than
23 pursuant to K.S.A. 17-76,143a, and amendments thereto, a series may not
24 merge, convert, or consolidate pursuant to any section of the Kansas
25 revised limited liability company act, the business entity transactions act,
26 K.S.A. 17-78-101 et seq., and amendments thereto, or any other statute of
27 this state.

28 (b) Notice of the limitation on liabilities of a series as referenced in
29 subsection (c) shall be set forth in the articles of organization of the limited
30 liability company. Notice in articles of organization of the limitation on
31 liabilities of a series as referenced in subsection (c) shall be sufficient for
32 all purposes of this subsection whether or not the limited liability company
33 has formed any series when such notice is included in the articles of
34 organization, and there shall be no requirement that any specific series of
35 the limited liability company be referenced in such notice. The fact that

1 articles of organization that contain the foregoing notice of the limitation
2 on liabilities of a series is on file in the office of the secretary of state shall
3 constitute notice of such limitation on liabilities of a series.

4 (c) Notwithstanding anything to the contrary set forth in the Kansas
5 revised limited liability company act or under other applicable law, in the
6 event that an operating agreement establishes or provides for the
7 establishment of one or more series, and if to the extent the records
8 maintained for any series account for the assets associated with such series
9 separately from the other assets of the limited liability company, or any
10 other series thereof, and if the operating agreement so provides, and if
11 notice of the limitation on liabilities of a series as referenced in this
12 subsection is set forth in the articles of organization of the limited liability
13 company and if the limited liability company has filed a certificate of
14 designation for each series which is to have limited liability under this
15 section, then the debts, liabilities, obligations and expenses incurred,
16 contracted for or otherwise existing with respect to such series shall be
17 enforceable against the assets of such series only, and not against the assets
18 of the limited liability company generally or any other series thereof, and,
19 unless otherwise provided in the operating agreement, none of the debts,
20 liabilities, obligations and expenses incurred, contracted for or otherwise
21 existing with respect to the limited liability company generally or any
22 other series thereof shall be enforceable against the assets of such series.
23 Neither the preceding sentences nor any provision pursuant thereto in an
24 operating agreement, articles of organization or certificate of designation
25 shall: Restrict a series or limited liability company on behalf of a series
26 from agreeing in the operating agreement or otherwise that any or all of
27 the debts, liabilities, obligations, and expenses incurred, contracted for,
28 otherwise existing with respect to the limited liability company generally
29 or any other series thereof shall be enforceable against the assets of such
30 series; or restrict a limited liability company from agreeing in the
31 operating agreement or otherwise that any or all of the debts, liabilities,
32 obligations, and expenses incurred, contracted for, or otherwise existing
33 with respect to a series shall be enforceable against the assets of the
34 limited liability company generally. Assets associated with a series may be
35 held directly or indirectly, including in the name of such series, in the
36 name of the limited liability company, through a nominee or otherwise.
37 Records maintained for a series that reasonably identify its assets,
38 including by specific listing, category, type, quantity, computational, or
39 allocational formula or procedure, including a percentage or share of any
40 asset or assets, or by any other method where the identity of such assets is
41 objectively determinable, will be deemed to account for the assets
42 associated with such series separately from the other assets of the limited
43 liability company, or any other series thereof. As used in the Kansas

1 revised limited liability company act, a reference to assets of a series
2 includes assets associated with such series, a reference to assets associated
3 with a series includes assets of such series, a reference to members or
4 managers of a series includes members or managers associated with such
5 series, and a reference to members or managers associated with a series
6 includes members or managers of such series. The following shall apply to
7 a series:

8 (1) A series may carry on any lawful business, purpose or activity,
9 whether or not for profit, with the exception of the business of granting
10 policies of insurance, assuming insurance risks, or banking as defined in
11 K.S.A. 9-702, and amendments thereto. Unless otherwise provided in an
12 operating agreement, a series shall have the power and capacity to, in its
13 own name, contract, hold title to assets, including real, personal, and
14 intangible property, grant liens and security interests, ~~and~~ sue and be sued
15 *and otherwise conduct business and exercise the power of a limited*
16 *liability company under this article. The limited liability company and any*
17 *of its series may elect to consolidate its operations as a single taxpayer to*
18 *the extent required to file consolidated tax returns as permitted under*
19 *applicable law and elect to be treated as a single business for the purposes*
20 *of qualification or authorization to do business in this or any other state.*
21 *Such elections shall not affect the limitation of liability set forth in this*
22 *section except to the extent that the series have specifically accepted joint*
23 *liability by contract.*

24 (2) Except as otherwise provided by the Kansas revised limited
25 liability company act, no member or manager of a series shall be obligated
26 personally for any debt, obligation or liability of such series, whether
27 arising in contract, tort or otherwise, solely by reason of being a member
28 or acting as manager of such series. Notwithstanding the preceding
29 sentence, under an operating agreement or under another agreement, a
30 member or manager may agree to be obligated personally for any or all of
31 the debts, obligations and liabilities of one or more series.

32 (3) An operating agreement may provide for classes or groups of
33 members or managers associated with a series having such relative rights,
34 powers and duties as the operating agreement may provide, and may make
35 provision for the future creation in the manner provided in the operating
36 agreement of additional classes or groups of members or managers
37 associated with such series having such relative rights, powers and duties
38 as may from time to time be established, including rights, powers and
39 duties senior to existing classes and groups of members or managers
40 associated with such series. An operating agreement may provide for the
41 taking of an action, including the amendment of the operating agreement,
42 without the vote, consent or approval of any member or manager or class
43 or group of members or managers, including an action to create under the

1 provisions of the operating agreement a class or group of a series of
2 limited liability company interests that was not previously outstanding. An
3 operating agreement may provide that any member or class or group of
4 members associated with a series shall have no voting rights *or ability to*
5 *otherwise participate in the management or governance of such series, but*
6 *any such member or class or group of members are owners of the series.*

7 (4) An operating agreement may grant to all or certain identified
8 members or managers or a specified class or group of the members or
9 managers associated with a series the right to vote separately or with all or
10 any class or group of the members or managers associated with such
11 series, on any matter. Voting by members or managers associated with a
12 series may be on a per capita, number, financial interest, class, group or
13 any other basis.

14 (5) Unless otherwise provided in an operating agreement, the
15 management of a series shall be vested in the members associated with
16 such series in proportion to the then-current percentage or other interest of
17 members in the profits of such series owned by all of the members
18 associated with such series, the decision of members owning more than
19 50% of such percentage or other interest in the profits controlling, except
20 that if an operating agreement provides for the management of a series, in
21 whole or in part, by a manager *or managers*, the management of such
22 series, to the extent so provided, shall be vested in the manager *or*
23 *managers* who shall be chosen in the manner provided in the operating
24 agreement. The manager of a series shall also hold the offices and have the
25 responsibilities accorded to the manager as set forth in an operating
26 agreement. A series may have more than one manager. Subject to K.S.A.
27 17-76,105, and amendments thereto, a manager shall cease to be a
28 manager with respect to a series as provided in an operating agreement.
29 Except as otherwise provided in an operating agreement, any event under
30 the Kansas revised limited liability company act or in an operating
31 agreement that causes a manager to cease to be a manager with respect to a
32 series shall not, in itself, cause such manager to cease to be a manager of
33 the limited liability company or with respect to any other series thereof.

34 (6) Notwithstanding K.S.A. 17-76,109, and amendments thereto, but
35 subject to subsections (c)(7) and (c)(10), and unless otherwise provided in
36 an operating agreement, at the time a member of a series becomes entitled
37 to receive a distribution with respect to such series, the member has the
38 status of, and is entitled to all remedies available to, a creditor of such
39 series, with respect to the distribution. An operating agreement may
40 provide for the establishment of a record date with respect to allocations
41 and distributions with respect to a series.

42 (7) Notwithstanding K.S.A. 17-76,110(a), and amendments thereto, a
43 limited liability company may make a distribution with respect to a series.

1 A limited liability company shall not make a distribution with respect to a
2 series to a member to the extent that at the time of the distribution, after
3 giving effect to the distribution, all liabilities of such series, other than
4 liabilities to members on account of their limited liability company
5 interests with respect to such series and liabilities for which the recourse of
6 creditors is limited to specified property of such series, exceed the fair
7 value of the assets associated with such series, except that the fair value of
8 property of such series that is subject to a liability for which the recourse
9 of creditors is limited shall be included in the assets associated with such
10 series only to the extent that the fair value of that property exceeds that
11 liability. For purposes of the immediately preceding sentence, the term
12 "distribution" shall not include amounts constituting reasonable
13 compensation for present or past services or reasonable payments made in
14 the ordinary course of business pursuant to a bona fide retirement plan or
15 other benefits program. A member who receives a distribution in violation
16 of this subsection, and who knew at the time of the distribution that the
17 distribution violated this subsection, shall be liable to the series for the
18 amount of the distribution. A member who receives a distribution in
19 violation of this subsection, and who did not know at the time of the
20 distribution that the distribution violated this subsection, shall not be liable
21 for the amount of the distribution. Subject to K.S.A. 17-76,110(c), and
22 amendments thereto, which shall apply to any distribution made with
23 respect to a series under this subsection, this subsection shall not affect any
24 obligation or liability of a member under an agreement or other applicable
25 law for the amount of a distribution.

26 (8) Unless otherwise provided in the operating agreement, a member
27 shall cease to be associated with a series and to have the power to exercise
28 any rights or powers of a member with respect to such series upon the
29 assignment of all of the member's limited liability company interest with
30 respect to such series. Except as otherwise provided in an operating
31 agreement, any event under the Kansas revised limited liability company
32 act or an operating agreement that causes a member to cease to be
33 associated with a series shall not, in itself, cause such member to cease to
34 be associated with any other series or terminate the continued membership
35 of a member in the limited liability company or cause the dissolution of
36 the series, regardless of whether such member was the last remaining
37 member associated with such series.

38 (9) Subject to K.S.A. 17-76,116, and amendments thereto, except to
39 the extent otherwise provided in the operating agreement, a series may be
40 dissolved and its affairs wound up without causing the dissolution of the
41 limited liability company. The dissolution of a series shall not affect the
42 limitation on liabilities of such series provided by this subsection (c). A
43 series is dissolved and its affairs shall be wound up upon the dissolution of

1 the limited liability company under K.S.A. 17-76,116, and amendments
2 thereto, or otherwise upon the first to occur of the following:

3 (A) At the time specified in the operating agreement;

4 (B) upon the happening of events specified in the operating
5 agreement;

6 (C) unless otherwise provided in the operating agreement, upon the
7 vote, consent or approval of members associated with such series who own
8 $\frac{2}{3}$ or more of the then-current percentage or other interest in the profits of
9 such series of the limited liability company owned by all of the members
10 associated with such series; or

11 (D) the dissolution of such series under subsection (c)(11).

12 (10) Notwithstanding K.S.A. 17-76,118(a), and amendments thereto,
13 unless otherwise provided in the operating agreement, a manager
14 associated with a series who has not wrongfully dissolved such series or, if
15 none, the members associated with such series or a person consented to or
16 approved by the members associated with such series, in either case, by
17 members who own more than 50% of the then-current percentage or other
18 interest in the profits of such series owned by all of the members
19 associated with such series, may wind up the affairs of such series, but the
20 district court, upon cause shown, may wind up the affairs of a series upon
21 application of any member or manager associated with such series, or the
22 member's personal representative or assignee, and in connection therewith,
23 may appoint a liquidating trustee. The persons winding up the affairs of a
24 series may, in the name of the limited liability company and for and on
25 behalf of the limited liability company and such series, take all actions
26 with respect to such series as are permitted under K.S.A. 17-76,118(b), and
27 amendments thereto. The persons winding up the affairs of a series shall
28 provide for the claims and obligations of such series and distribute the
29 assets of such series as provided in K.S.A. 17-76,119, and amendments
30 thereto, which section shall apply to the winding up and distribution of
31 assets of a series. Actions taken in accordance with this subsection shall
32 not affect the liability of members and shall not impose liability on a
33 liquidating trustee.

34 (11) On application by or for a member or manager associated with a
35 series, the district court may decree dissolution of such series whenever it
36 is not reasonably practicable to carry on the business of such series in
37 conformity with an operating agreement.

38 (12) For all purposes of the laws of the state of Kansas, a series is an
39 association, regardless of the number of members or managers, if any, of
40 such series.

41 (d) In order to form a series of a limited liability company, a
42 certificate of designation must be filed in accordance with this subsection.

43 (1) (A) A certificate of designation shall set forth:

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

2 (ii) the name of the series.

3 (B) A certificate of designation may include any other matter that the
4 members of such series determine to include therein.

5 (C) A certificate of designation properly filed with the secretary of
6 state prior to July 1, 2020, shall be deemed to comply with the
7 requirements of this paragraph.

8 (2) A certificate of designation shall be executed in accordance with
9 K.S.A. 17-7908(b), and amendments thereto, and shall be filed in the
10 office of the secretary of state in accordance with K.S.A. 17-7910, and
11 amendments thereto. A certificate of designation is not an amendment to
12 the articles of organization of the limited liability company.

13 (3) A certificate of designation may be amended by filing a certificate
14 of amendment thereto in the office of the secretary of state.

15 (A) The certificate of amendment shall set forth:

16 (i) The name of the limited liability company;

17 (ii) the name of the series; and

18 (iii) the amendment to the certificate of designation.

19 (B) A certificate of designation properly filed with the secretary of
20 state prior to July 1, 2020, that changed a previously filed certificate of
21 designation shall be deemed to be a certificate of amendment thereto for
22 purposes of this paragraph.

23 (4) A manager of a series or, if there is no manager, then any member
24 of a series who becomes aware that any statement in a certificate of
25 designation filed with respect to such series was false when made, or that
26 any matter described therein has changed making the certificate of
27 designation false in any material respect, shall promptly amend the
28 certificate of designation.

29 (5) A certificate of designation may be amended at any time for any
30 other proper purpose.

31 (6) Unless otherwise provided in the Kansas revised limited liability
32 company act or unless a later effective date or time, which shall be a date
33 or time certain, is provided for in the certificate of amendment, a
34 certificate of amendment shall be effective at the time of its filing with the
35 secretary of state.

36 (7) A certificate of designation shall be canceled upon the
37 cancellation of the articles of organization of the limited liability company
38 named in the certificate of designation, or upon the filing of a certificate of
39 cancellation of the certificate of designation, or upon the future effective
40 date or time of a certificate of cancellation of the certificate of designation,
41 or as provided in K.S.A. 17-76,139(d), and amendments thereto, or upon
42 the filing of a certificate of merger or consolidation if the series is not the
43 surviving or resulting series in a merger or consolidation or upon the future

1 effective date or time of a certificate of merger or consolidation if the
2 series is not the surviving or resulting series in a merger or consolidation.
3 A certificate of cancellation of the certificate of designation may be filed at
4 any time, and shall be filed, in the office of the secretary of state to
5 accomplish the cancellation of a certificate of designation upon the
6 dissolution of a series for which a certificate of designation was filed and
7 completion of the winding up of such series.

8 (A) A certificate of cancellation of the certificate of designation shall
9 set forth:

- 10 (i) The name of the limited liability company;
- 11 (ii) the name of the series;
- 12 (iii) the future effective date or time, which shall be a date or time
13 certain, of cancellation if it is not to be effective upon the filing of the
14 certificate of cancellation; and
- 15 (iv) any other information the person filing the certificate of
16 cancellation of the certificate of designation determines.

17 (B) A certificate of designation properly filed with the secretary of
18 state prior to July 1, 2020, that dissolved a series shall be deemed to be a
19 certificate of cancellation thereto for purposes of this paragraph.

20 (8) A certificate of cancellation of the certificate of designation that is
21 filed in the office of the secretary of state prior to the dissolution or the
22 completion of winding up of a series may be corrected as an erroneously
23 executed certificate of cancellation of the certificate of designation by
24 filing with the office of the secretary of state a certificate of correction of
25 such certificate of cancellation of the certificate of designation in
26 accordance with K.S.A. 17-7912, and amendments thereto.

27 (9) The secretary of state shall not issue a certificate of good standing
28 with respect to a series if the certificate of designation is canceled or the
29 limited liability company has ceased to be in good standing.

30 (e) The name of each series as set forth in its certificate of
31 designation:

32 (1) Shall include the name of the limited liability company, including
33 any word, abbreviation or designation required by K.S.A. 17-7920, and
34 amendments thereto;

35 (2) may contain the name of a member or manager;

36 (3) must comply with the requirements of K.S.A. 17-7918, and
37 amendments thereto, to the same extent as a covered entity; and

38 (4) may contain any word permitted by K.S.A. 17-7920, and
39 amendments thereto, and may not contain any word prohibited to be
40 included in the name of a limited liability company under Kansas law.

41 (f) If a foreign limited liability company that is registered to do
42 business in this state in accordance with K.S.A. 17-7931, and amendments
43 thereto, is governed by an operating agreement that establishes or provides

1 for the establishment of a series of members, managers, limited liability
2 company interests or assets having separate rights, powers or duties with
3 respect to specified property or obligations of the foreign limited liability
4 company or profits and losses associated with specified property or
5 obligations, that fact shall be so stated on the application for registration as
6 a foreign limited liability company. In addition, the foreign limited liability
7 company shall state on such application whether the debts, liabilities and
8 obligations incurred, contracted for or otherwise existing with respect to a
9 particular series, if any, are enforceable against the assets of such series
10 only, and not against the assets of the foreign limited liability company
11 generally or any other series thereof, and whether any of the debts,
12 liabilities, obligations and expenses incurred, contracted for or otherwise
13 existing with respect to the foreign limited liability company generally or
14 any other series thereof shall be enforceable against the assets of such
15 series.

16 (g) *An operating agreement may impose restrictions, duties and*
17 *obligations on members of the limited liability company or any series*
18 *thereof as a manner of internal governance, including, without limitation,*
19 *those with regard to:*

20 (1) *Choice of law, forum selection or consent to personal*
21 *jurisdiction;*

22 (2) *capital contributions;*

23 (3) *restrictions on, or terms and conditions of, the transfer of*
24 *membership interests;*

25 (4) *restrictive covenants, including noncompetition, nonsolicitation*
26 *and confidentiality provisions;*

27 (5) *fiduciary duties; and*

28 (6) *restrictions, duties or obligations to or for the benefit of the*
29 *limited liability company, other series thereof or their affiliates.*

30 (h) *The wrongful transfer of property from a series to another series*
31 *or the limited liability company as a whole with intent to hinder, delay or*
32 *defraud creditors of their just and lawful debts or damages, or to defraud*
33 *shall be subject to K.S.A. 33-102, and amendments thereto.*

34 Sec. 2. K.S.A. 17-76,143 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the statute book.