Revised Limited Liability Company Act; HB 2371

HB 2371 amends the Revised Limited Liability Company Act (LLC Act) to specify document forms and signature and delivery options and to clarify filing fee limits; amends the Business Entity Transactions Act to modify requirements related to various certificates; and amends the Business Entity Standard Treatment Act to modify registration requirements with the Secretary of State and clarify certain provisions related to resident agent change.

Revised Limited Liability Company Act

Definitions

The bill defines “document” and “electronic transmission” and amends definitions for “manager,” “member,” and “operating agreement.”

Document. The bill defines “document” to mean:

- Any tangible medium on which information is inscribed. “Document” includes handwritten, typed, printed, or similar instruments and copies of such instruments; and
- An electronic transmission.

Electronic transmission. The bill defines “electronic transmission” to mean 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 directly reproduced in paper form by such recipient through an automated process.

Manager. The bill amends the definition of “manager” to specify that it includes a manager of the limited liability company (LLC) generally and a manager associated with a series of the LLC. Unless the context otherwise requires, references in the LLC Act to a manager are deemed to include both a general and a series manager.

Member. The bill amends the definition of “member” to specify that it includes a member of the LLC generally and those associated with a series of the LLC. Unless the context otherwise requires, references in the LLC Act to a member are deemed to include both a general and series member.

Operating agreement. Continuing law provides that an LLC is bound by its operating agreement, whether or not it has executed such agreement. The bill amends the definition of “operating agreement” to:

- Specify that these operating agreement provisions include any series of the LLC; and

- Specify that the term may consist of one or more agreements, instruments, or other writings, and include or incorporate one or more schedules, supplements, or other writings containing provisions as to the conduct of the business and affairs of the LLC or any related series.

Documentation, Signature, Delivery, and Receipt

The bill provides that a document may provide for any act or transactions governed by the LLC Act or an operating agreement of an LLC. An electronic transmission is considered the equivalent of a written document.

The provisions described below apply solely for purposes of determining whether an act or transaction has been documented and whether the document has been signed and delivered in accordance with the LLC Act and the operating agreement.

Signature. The bill provides that if the LLC Act or an operating agreement requires or permits a signature, such signature could be manual, facsimile, conformed, or an electronic signature. For this purpose, an electronic signature includes an electronic symbol or process that is attached to, or logistically associated with, a document, and executed or adopted by a person who has intent to execute, authenticate, or adopt the document. The bill further specifies that a person could execute a document with such person's signature.

Delivery. Unless otherwise provided in the operating agreement, or agreed between the sender and recipient, an electronic transmission is considered as delivered when it enters an information processing system that was designated by the recipient for the purpose of receiving such transmissions. Such transmission is required to be in a form capable of being processed by such system and retrievable from the system.

Recipient designation of an information processing system is determined by the operating agreement or from the context and surrounding circumstances, including the parties' conduct.

Receipt. Additionally, the bill considers an electronic transmission delivered even if no person is aware of its receipt. Receipt of an electronic acknowledgment from an information processing system is proof that such transmission was received, but will not be proof that the content of the transmission corresponds with what was received.

Uniform Electronic Transactions Act (UETA). The bill clarifies that its provisions regarding documentation, signature, delivery, and receipt do not preclude persons from conducting a transaction in accordance with the UETA, if the part or parts of the transaction governed by the LLC Act are documented, signed, and delivered in accordance with either the bill's electronic transmission provisions or those in the LLC Act.

Exceptions. The bill clarifies that its documentation, signature, delivery, and receipt provisions do not apply to:

- A document filed with or submitted to the Secretary of State, a court, or other judicial or governmental body of the State;

- A certificate of LLC interest, except that a signature on such certificate could be manual, facsimile, or electronic; and

- An act or transaction governed by the Business Entity Standard Treatment Act.

The bill specifies that these exceptions do not create any presumption about the lawful means to document any act or transaction or the lawful means to sign or deliver such document.

Operating agreement restrictions. An operating agreement can only be allowed to limit the application of the signature, delivery, and receipt provisions, unless it expressly restricts one or more means of documenting an act or transaction or of signing or delivering a document that would otherwise be permitted by the bill.

Federal law. The bill provides that if any provision of the LLC Act is later deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, the provisions of the LLC Act control to the fullest extent permitted by such federal law.

Subscription

The bill specifies that a subscription for an LLC interest, whether submitted in writing, electronically, or another legal method, is irrevocable to the extent contained in the subscription terms.

Void or Voidable Acts or Transactions

Ratification or waiver. Under the bill, any act or transaction that can be taken by or in respect of an LLC under the LLC Act that is void or voidable when taken may be ratified.

If the act or transaction conflicts with the terms of an operating agreement, such conflict can be waived by the members, manager, or other persons who are required to give approval:

- For such act or transaction to be validly taken; or

- To amend the operating agreement in a manner that would permit the act or transaction to be validly taken, in each case at the time of such ratification or waiver.

Additionally, if the void or voidable act or transaction was the issuance or assignment of any LLC interests, such interests purportedly issued or assigned are deemed not to have been issued or assigned for purposes of determining whether such act was ratified or waived.

Date of act or transaction. Any act or transaction that is ratified, or waived, is deemed validly taken at the time of the act or transaction.

Operating agreement amendment notice. The bill requires notice to be given pursuant to the terms of an operating agreement. If notice is required after a ratification or waiver is effectuated, the bill requires notice be given to members, managers, or other persons who would have been entitled to notice, but who had not otherwise received notice or participated in the ratification or waiver.

Validity of a ratification or waiver. The bill further specifies that its ratification or waiver procedures may not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by any other means permitted by law.

Judicial review. Under the bill, an LLC or any member, manager, or person claiming to be harmed by a ratification or waiver can file an action in district court. Upon receiving the application, the court can review an act or transaction and make a determination of its validity and the effectiveness of such ratification or waiver.

An application for judicial review must name the LLC as a party and service of process to be made to the resident agent of the LLC, which is deemed to be service to the company itself. No other party must be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver.

The court is authorized to order further or other notice of the application to be made by the LLC. The bill provides that these notice provisions would not limit or affect the right to serve process in any other manner and that these provisions are an extension of, rather than a limit on, existing service rights of legal process upon non-residents.

Act or Omission by an Officer

Except as provided in the operating agreement, for any act or omission occurring after June 30, 2025, the bill states that for indemnification purposes, the term "officer" includes an officer of the LLC who:

- Is or was the president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer, or chief accounting officer of the LLC; or

- Is or was identified in the LLC's public filings with the U.S. Securities and Exchange Commission, because such person is or was one of the most highly compensated executive officers of the LLC.

Merger or Consolidation

Under continuing law, a domestic LLC may merge or consolidate with one or more LLCs to become a surviving or resulting LLC, per the merger or consolidation agreement. The surviving or resulting LLC is required to file a certificate or merger or consolidation with the Secretary of State. If a domestic LLC is the surviving entity, it is required to state within its certificate any amendments it desires to be made to its articles of organization.

The bill allows the surviving domestic LLC to also amend and restate the articles of organization of the surviving entity in its entirety in the certificate. Additionally, the bill allows such entity to amend its operating agreement. Continuing law also allows a surviving entity to adopt a new operating agreement instead.

Appraisal Rights

Prior law authorized appraisal rights to be provided in an operating agreement or an agreement of merger or consolidation. The bill provides that there are no statutory appraisal rights, unless provided in either such agreement or under a plan of division. The bill also makes amendments to include a series or division of an LLC when such entity is party to the merger or consolidation.

Division of an LLC

Under continuing law, an LLC may divide itself into two or more domestic LLCs. The dividing company is required to file a certificate of division with the Office of the Secretary of State.

The bill amends provisions of the LLC Act concerning the content of such certificates to allow the dividing company to include any other information it desires. Furthermore, the bill allows a certificate of division to be amended to change the name or business address of a division contact, or to add additional information, if desired. Such amendments are effective upon filing with the Office of the Secretary of State. The agency is required to accept the filing of a certificate of amendment for all division companies, provided at least one such company is in good standing at the time of filing.

Elective amendments. Amendments to a certificate of division can be made by filing a certificate of amendment for each division company that exists as an LLC in the Office of the Secretary of State. Such certificate of amendment must include:

- The name of the dividing company and, if changed, the name of the original dividing company;
- The name of the division of the company to which the amendment relates; and
- The amendment to the certificate of division.

Required amendment. Upon becoming aware that the name or business address of the division contact, or other information required to be in the certificate, was false when made, or that such information has changed, either the manager or member (if no manager exists) of the dividing company is required to amend the certificate. These provisions apply for six years following the date of division, regardless of whether the dividing company is a survivor or no longer exists.

Execution of amended certificates. Unless otherwise provided in a plan of division, or in the certificate, each certificate of amendment must be executed:

- If the dividing company is a surviving company, by one or more authorized persons on behalf of the dividing company acting on behalf of the division company to which the certificate of amendment relates; and

- If the dividing company is not a surviving company or no longer exists as an LLC, by one or more authorized persons on behalf of a resulting company acting on behalf of the division company who is the subject of the certificate of amendment.

Each division company is deemed to have consented to the execution of the certificate of amendment.

Membership in a Division Company

The bill amends law to allow an operating agreement to name existing or new members of the LLC. Additionally, the bill creates new provisions to specify the procedure of admitting a new member of a division company. Such members are named in an operating agreement of a division company or in the plan of division. If an inconsistency exists, or the person is being admitted as a member of an LLC, pursuant to a division in which the LLC is not a division company, the terms of the plan of division control.

Examination of LLC Information by Members

Under continuing law, LLC members may examine certain information kept by the LLC, subject to reasonable standards. The bill specifies that such information includes books, records, and other documents. Conforming amendments are made to reference books and other documents within the records provisions. References to written records are replaced with paper records, allowing for the printing of an electronic record.

Additionally, the bill states that a member's right to obtain information under the LLC Act or an operating agreement for a purpose reasonably related to their interest as a member or other stated purpose is necessary and essential to achieving that purpose.

Continuing law allows members to obtain information and allows rights to be restricted by an operating agreement. The bill clarifies that such right may include examination of a record and that such right may be expanded in an operating agreement. The bill states that these information provisions could not be construed to limit the ability of an LLC to expand or restrict the rights of a member or manager to obtain or examine information by any other means permitted by law.

Delegation of Rights, Powers, and Duties

Continuing law allows a member or manager of an LLC to delegate their rights, powers, and duties to manage and control the business and affairs of the LLC to one or more persons.

The bill allows delegation to a committee of one or more persons and provides that any such delegation could be made irrespective of whether the delegating person has a conflict of interest with respect to the underlying matter and reason for delegation. Persons to whom the rights, powers, and duties are being delegated are not deemed to have the same conflict of interest as the delegating person, unless the conflict exists with that person independently.

LLC Filing Fee

The bill replaces law requiring an application and recording fee of $150 be paid to the Office of the Secretary of State when a LLC files its articles of organization or, if a foreign LLC, its application to do business with provisions allowing the Secretary of State to set such filing fee through rules and regulations, with a limit of $150.

Series LLCs

Continuing law allows an operating agreement to establish or designate a series of members, managers, LLC company interests, or assets. A series is formed by filing a certificate of designation with the Secretary of State. A series has the power and capacity to contract, hold title to assets, sue, and be sued in its own name.

Consolidation. The bill further clarifies that a series could conduct business and exercise the power of an LLC. Additionally, an LLC or any of its series can elect to consolidate its operations as a single taxpayer to the extent required to file consolidated tax returns and elect to be treated as a single business for the purposes of qualification or authorization to do business in Kansas or another state. Such election does not affect liability limitations under the Act except to the extent the series has specifically accepted joint liability by contract.

Merger or consolidation. Under continuing law, a series can merge or consolidate with one or more other series of the same LLC by filing a certificate of merger or consolidation of series with the Office of the Secretary of State. The bill allows the certificate to be amended at a later date. Such amendments can amend and restate the certificate of designation of the surviving series in its entirety.

Voting rights. Continuing law allows an operating agreement to deny voting rights to a member, class, or group of members of a series. The bill allows the operating agreement to also prohibit participation in the management or governance of such series, but still confer ownership of the series to such member, class, or group of members.

Series operating agreement. The bill specifies that an operating agreement may impose restrictions, duties, and obligations on members of the LLC or any series of the LLC as a matter of internal governance, including, without limitation, those with regard to:

- Choice of law, forum selection, or consent to personal jurisdiction;
- Capital contributions;
- Restrictions on, or terms and conditions of, the transfer of membership interests;
- Restrictive covenants, including non-competition, non-solicitation, and confidentiality provisions;
- Fiduciary duties; and

- Restrictions, duties, or obligations to or for the benefit of the LLC, other series, or their affiliates.

Wrongful transfer of property. If a series wrongfully transfers property to another series or the LLC as a whole with an intent to hinder, delay, or defraud creditors of their just and lawful debts or damages, or to defraud, such transfers are deemed void pursuant to continuing law.

Dissolution of a Series or LLC

Dissolution of a series. Under the bill, if an operating agreement provides the manner in which a dissolution of a series is to be revoked, such manner can be followed.

A series dissolution can be revoked if provided for in the LLC's operating agreement, unless:

- The LLC has dissolved and the dissolution was not revoked; or
- The LLC operating agreement prohibits revocation of a series dissolution.

If the series dissolution is revoked, the LLC is not dissolved and its affairs not wound up, prior to filing a certificate of cancellation, the series is continued through one of the following events:

- If the dissolution is effected by the vote or consent of the members associated with the series, or other persons whose approval is required under an operating agreement; or

- In the case of a dissolution not effectuated by a vote or consent, and which occurs either at a time specified in the operating agreement or after the occurrence of certain specified events, is stopped due to an agreement to amend the operating agreement, or approval of members to revoke such dissolution.

If a series is dissolved by dissolution of the LLC, unless a certificate of cancellation of the series' certificate of designation has been filed in the office of the Secretary of State, or the operating agreement prohibits revocation of the dissolution of a series, the dissolution of the series is automatically revoked upon any revocation of the dissolution of the underlying LLC.

The bill further specifies that continuing law and its amendments cannot be construed to limit the revocation of dissolution of a series by other means allowed by law.

Dissolution of an LLC. Continuing law allows for dissolution of an LLC, which may be revoked in certain circumstances. The bill adds provisions to allow an operating agreement to specify persons whose vote, consent, or approval is required for a dissolution of an LLC. Such persons can vote to revoke a dissolution that would have otherwise occurred.

LLC Forfeiture or Cancellation

Under continuing law, a domestic LLC or a foreign LLC may forfeit its articles of incorporation or authority to do business if it fails to update records with the Secretary of State regarding its registered agent or registered office when a change occurs. An LLC can be reinstated by filing a certificate of reinstatement with the Secretary of State and paying certain fees. The bill updates references to the certificate of reinstatement to specify that it applies to an LLC.

The bill specifies that upon filing of the certificate of reinstatement, that reinstatement also applies to each series that has not been terminated and wound up and that other privileges of being reinstated apply to the LLC and any such series.

Statutory Public Benefit Companies

The bill amends and repeals law related to the formation and operation of a statutory public benefit limited liability company (SPBLLC).

Continuing law authorizes an LLC to elect to become an SPBLLC. The bill allows an LLC to be formed as an SPBLLC. If an LLC is not formed as an SPBLLC, the bill allows the LLC to become designated as such by the terms of its operating agreement, or by amending its operating agreement and articles of organization to comply with the bill. Continuing law requires certain provisions to be contained with an SPBLLC's articles of incorporation. The bill makes conforming amendments to require the same information to be contained in its operating agreement.

In the event of an inconsistency between the operating agreement and articles of incorporation, the bill specifies that the operating agreement controls among those bound by such agreement. If a manager of the SPBLLC, or if there is no manager, any other member of such, becomes aware that the specified public benefits are inaccurately set forth in the articles of incorporation, such person must promptly amend such articles. Any provisions of the operating agreement or articles of incorporation that are inconsistent with the provisions of the bill are not effective to the extent of such inconsistency.

Business Entity Transactions Act

The bill makes amendments to provisions related to certain certificates, including certificates of merger, certificates of interest exchange, certificates of conversion, and certificates of domestication.

Certificate of merger. Requirements for certificates of merger are amended to require a statement that the merger will be approved by each merging entity prior to the time the merger becomes effective. Under continuing law, when a merger is effective, the surviving entity's public organic document is amended as provided in the certificate of merger. The bill allows such certificate to amend and restate the public organic document entirely.

Certificate of interest exchange. Requirements for certificates of interest exchange are amended to require a statement that the interest exchange will be approved by the acquired entity prior to the time the exchange becomes effective. Under continuing law, when an interest exchange is effective, the acquired entity's public organic document is amended as provided in the certificate of merger. The bill allows such certificate to amend and restate the public organic document entirely.

Certificate of conversion. Requirements for certificates of conversion are amended to require a statement that the conversion will be approved by each converting entity prior to the time the conversion becomes effective.

Certificate of domestication. Requirements for certificates of domestication are amended to require a statement that the conversion will be approved by each converting entity prior to the time the domestication becomes effective.

Business Entity Standard Treatment Act

Filings of certificate. The bill makes conforming amendments to require the filing of certain documents addressed by the bill with the Office of the Secretary of State, including certificates of amendment to certificate of designation and certificates of merger or consolidation of series.

Resident agent standing. The bill requires any domestic entity that serves as a resident agent for a covered entity to be in good standing with the State.

Resident agent name change. Continuing law provides that a merger or consolidation of the resident agent, with or into another entity that succeeds to its assets by operation of law, constitutes a change of name, which requires a records update with the Office of the Secretary of State.

Under the bill, any of the following events are deemed a change of name:

- The conversion of the resident agent into another person; or
- A division of the resident agent in which an identified resulting person succeeds to all of the assets and liabilities of the resident agent related to its resident agent business pursuant to a plan of division, as set forth in a certificate of division.

Resident agent certificate of resignation. Under continuing law, a resident agent for a business may resign without appointing a successor by paying a fee, if authorized by law, and by filing a certificate of resignation with the Office of the Secretary of State. The bill amends law to require the resigning resident agent to provide notice of resignation to the covered entity, rather than each affected entity, at least 30 days prior to filing the certificate.