

House Committee on Judiciary

Testimony on House Bill 2207

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January 26, 2012

Chairman Kinzer and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2207. This bill would allow for the establishment of series limited liability companies. As the filing office for the State of Kansas, this bill would require the Kansas Secretary of State's office to make changes to its current filing process. The Secretary of State's office has a handful of questions, comments, and concerns I would like to address to the Committee regarding how HB 2207 would affect the Secretary of State's filing procedures.

The bill, as currently written, should not be overly burdensome for our office to administer. However, it would require the creation of a new entity type and a new set of forms for organizing series LLCs. While this will require some process creation and programming, it should not be incredibly difficult if given enough time to implement these changes. However, I would ask that the committee provide guidance in a few areas if it decides to pass this bill.

First, the bill does not clearly state the process by which a regular LLC can become a series LLC. Theoretically, it would merely require an amendment to the LLC's articles of organization to include the statutory notice. It would be helpful to our office to clearly mention this possibility in the law if it is intended. Such a change would appear in the LLC's history as an amendment.

Second, as we read the current bill, this legislation does not require indexing of individual series. Rather, all series will be indexed by the master LLC. If this is what is intended by the legislature, this addition should not create a major problem for our IT staff. However, indexing by series and allowing searches to be performed at the series level could present substantial information technology hurdles as our system is not set up to allow filing searches.

New Section 1(d) seems to reference an outdated process, no longer used by our office. The bill refers to duplicate copies stamped “Filed” and marked with the filing date. In the past, duplicate copies of filings were submitted. This process required our office to compare the filings to ensure they were identical. Instead, we now take one filing. Validate it and issue a certified copy. Our office has found this to be a more efficient approach to the filing process.

In talking to Representative Bruchman, there appears to be an amendment to the bill that does add additional requirements to our office. As of writing this testimony, our office has not received that amendment language from the Reviser’s office. Through discussions with Representative Bruchman, this amendment would require that any limited liability company wishing to establish a series file a certificate of designation with the Secretary of State. We would ask for further guidance on the requirements of the certificate of designation. The Secretary of State’s office will either need to create a new form for this certificate of designation or will need to determine if the certificate of designation submitted by the limited liability company meets statutory requirements. Either option will require our office to make a determination of whether the certificate of designation standards are met before the certificate is officially filed. Clear requirements would make this process easier and more efficient for both the Secretary of State’s office and the limited liability companies establishing the series.

Section 5 of this Bill declares that the act shall take effect and be in force from and after its publication in the statute book. Due to the changes to the filing process this bill would necessitate the Secretary of State’s office make; our office requires a longer time period to prepare for this change. The length of preparation time required is contingent on the requirements for the certificate of designation and the subsequent changes that must be made to comply with these requirements.

Thank you for your consideration.

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HB 2261 Section	HB 2261 Language	Current Process	Impact of Proposed Language
New Section 9	Would allow Fictitious/DBA names,	Kansas does not have an assumed or fictitious business name law.	<p>This would bring LLCs out of conformity with the remainder of the Entity filings.</p> <p>A business in Kansas is not prohibited from adopting and using a name different than its legal name; it merely has no means of registering that name with the state. This would require extensive programming to create, within our system and online, the fictitious name availability rules, database tables, and forms to register the name.</p>
New Section 13	This changes the definition of who act as a Resident Agent.	This conflicts with the definition in KSA 17-6202.	This would bring LLCs out of conformity with the remainder of the Entity filings.
New Section 15	We don't have the "31 st day" termination provision.	The agent notifies the LLC 30 days prior to filing a resignation with our office. Once filed, the LLC has 60 days to appoint a new agent.	This would bring LLCs out of conformity with the remainder of Entity filings.
New Section 17	Term "Certificate of Organization"	Term "Articles of Organization"	This would require programming changes, form changes and publication changes.
	"Statement of Authority"	Statement of Authority is not in current law for LLCs. The General Partnership filing allows for a Statement of Authority.	<p>The General Partnership filing allows for a Statement of Authority which will help our programmers add it to the system, it will still take time and testing to ensure that it is implemented correctly across the filing, validation, scanning, and refund processes.</p> <p>This would require programming changes, form changes and publication changes.</p>
	"Statement of Cancellation"	We currently do not have a "statement of Cancellation".	This would bring LLCs out of conformity with the remainder of the Entity filings.

			This would require programming changes, form changes and publication changes.
	Would allow for prior to effective date termination	We do not currently have filing process for a prior to effective date termination	This would bring LLCs out of conformity with the remainder of the Entity filings. This would require programming changes.
	New Filing – Certificate that states that a company has no members.	This doesn't currently exist in Kansas law.	This would require programming changes, form changes and publication changes.
	New Filing – two part filing, one that allows for the filing of an LLC without naming members and a second filing that names members and completes the formation of the LLC.	This doesn't currently have a shelf provision.	This would bring LLCs out of conformity with the remainder of Entity filings. This would require programming changes, form changes and publication changes.
New Section 18	Term "Statement of Change"/"Statement of Correction"	Term "Certificate of Amendment"/ "Certificate of Correction"	This would bring LLCs out of conformity with the remainder of Entity filings. This would require programming changes, form changes and publication changes.
New Section 19	Does not include signature rules that incorporate "under the penalty of perjury."	Penalty of Perjury is included in KSA 17-7674 (repealed by HB 2261)	We request clarification to ensure that either New Section 23 applies to the entire statute or certainty that KSA 17-6003(b) (electronic signatures) does not conflict with the new language.
	New Filing – "Statement of Denial"	Statement of Denial is not in current law for LLCs. The General Partnership filing allows for a Statement of Denial.	The General Partnership filing allows for a Statement of Denial which will help our programmers add it to the system, it will still take time and testing to ensure that it is implemented correctly across the filing, validation, scanning, and refund processes.

New Section 21	Requires the filed statement and a receipt be sent back to the customer.	We file stamp and certify stamp the original document. The stamp includes payment amount and return it to the customer.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>We request that the certified file stamped copy act as the statement and the receipt as to not increase costs.</p> <p>This would require programming changes to develop a separate parallel process for this filing.</p>
	Requires that we send the filed Statement of Denial to the filing party and to the LLC.	Currently we only send one notice to the delivery address specified upon filing.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>Two notifications would increase costs and potentially filing fees.</p>
	Filing may specify an effective date AND time.	We currently allow the customer to specify an effective date.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>Allowing a specific filing time would necessitate programming changes to our system and alterations to our paper forms.</p>
New Section 23	Signatures filed under Penalty of Perjury.	We have signature rules in KSA 17-6003(b).	We would ask the Committee for clarification. Similar to New Section 19, does New Section 23 apply to the entire act and is it necessary since HB 2261 does not repeal 17-6003(b)?
New Section 24	New Filing – Certificate of Existence.	We provide “Certificates of Good Standing” and “Certificates of Fact”.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>We ask that “Certificate of Existence” be divided into “Certificate of Good Standing” and “Certificate of Fact” depending on the information the customer needs. If the “Certificate of Existence” remains, it would require programming changes.</p>

	New Filing – “Certificate of Authorization”.	The “Certificate of Authorization” is currently used in chapter 74 regarding business entities practicing technical professions.	This would bring LLCs out of conformity with the remainder of Entity filings. The term may need to be changed in HB 2261 to limit confusion. This certificate is also different than what we currently provide; it would require a form creation, a process change, and programming changes.
New Section 25	Requires the name and mailing address of the Resident Agent on the Annual Report.	The current statute does not require the annual report to provide the name and mailing address of its agent.	This would bring LLCs out of conformity with the remainder of Entity filings. This will increase processing time and require changes to our system.
	The timelines for filing Annual Reports are changed.	Currently Annual reports are filed based on tax year end.	This would bring LLCs out of conformity with the remainder of Entity filings. Changes will require new programming and customer education.
	This seems to allow for filing of fictitious names/DBA	Kansas does not have an assumed or fictitious name law.	This would bring LLCs out of conformity with the remainder of the Entity filings. A business in Kansas is not prohibited from adopting and using a name different than its legal name; it merely has no means of registering that name with the state. This would require extensive programming to create, within our system and online, the fictitious name availability rules, database tables, and forms to register the name
New Section 27	New Filing – “Statement of Authority”	Statement of Authority is not in current law for LLCs. The General Partnership filing allows for a Statement of Authority.	The General Partnership filing allows for a Statement of Authority which will help our programmers add it to the system, it will still take time and testing to ensure that it is implemented correctly across the filing, validation, scanning, and refund processes.

			This would require programming changes, form changes and publication changes.
	Grants the ability to cancel a Statement of Authority	We have similar process for General Partnerships	Would require programming changes, form creation, and training.
	Involves the county register of deeds for recording transfers of real property	There is a similar provision for General Partnerships	While this doesn't have a filing requirement it may require staff and customer education.
	New Filing –“Statement of Dissolution.”	There is a similar provision for General Partnerships.	Would require programming changes, form creation, and training.
	Automatically cancelling a “Statement of Authority” after 5 years.	There is a similar provision for General Partnerships.	Would require programming changes, form creation, and training.
New Section 48	The LLC “may” file a “Statement of Dissolution” stating the name of the company and that the company is dissolved.	Current law requires an LLC to file only a “Certificate of Cancellation”	This would bring LLCs out of conformity with the remainder of Entity filings. We ask that “may” be changed to “shall” or “must” and keep the “Certificate of Cancellation” to avoid confusion.
	New Filing – “Statement of Termination”	Current law requires an LLC to file only a “Certificate of Cancellation”	This would bring LLCs out of conformity with the remainder of Entity filings. We request clarification to determine how it is differentiated from a “Certificate of Cancellation.” If both are allowed, it would require programming changes, form creation, and training.

New Section 51	SOS may dissolve an LLC.	Current statute provides for a simple notification If the LCC fails to file their annual report and pay the fee within 90 days after the deadline.	<p>This would add a considerable amount of paperwork and notification to the current process. It would dramatically increase filing and postage costs to this agency.</p> <p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>We ask that we keep our current process and timeframes. Altering the timeframe would require programming changes.</p>
	Definition of "Serve."	The current statute requires service by mail	We would request clarification of "serve."
	"Record of Determination"	This is not an additional requirement. The current statute requires the SOS to notify the LLC when they fail to submit an annual report or pay the fee.	We would like to define "serve" regarding the record of determination to 1 st class mail.
	"Declaration of Dissolution"	The declaration of dissolution is not an additional requirement.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>We would like to retain current language that requires notice by publication (which we do in the Kansas Register).</p>
New Section 52	Reinstatement	Current statute does not limit an LLCs ability to reinstate within 2 years.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>A statement prepared by the SOS would be costly.</p>

	“Notice of Rejection”	Currently we send a rejection letter act as the notice (with rationale) of a rejected application for reinstatement.	<p>This would bring LLCs out of conformity with the remainder of Entity filings.</p> <p>We ask that our current rejection letter act as the notice (with rationale) of a rejected application for reinstatement.</p>
New Section 56	Seems to allow for Fictitious names for foreign LLCs.	Kansas does not have an assumed or fictitious name law.	<p>This would bring LLCs out of conformity with the remainder of the Entity filings.</p> <p>A business in Kansas is not prohibited from adopting and using a name different than its legal name; it merely has no means of registering that name with the state. This would require extensive programming to create, within our system and online, the fictitious name availability rules, database tables, and forms to register the name</p>
	Requires filing of a “Certificate of Existence” for a foreign LLC.	We currently require “Certificates of Good Standing.”	This section conflicts with SB 96 introduced last year that would allow an LLC (or any foreign company) to swear they are in good standing in their home state. This is easier administratively than asking for a certificate and is likely to be more current given that a certificate is “good” for 90 days.
New Section 59	Alternate Names	Kansas does not have an assumed or fictitious name law.	<p>This would bring LLCs out of conformity with the remainder of the Entity filings.</p> <p>A business in Kansas is not prohibited from adopting and using a name different than its legal</p>

			name; it merely has no means of registering that name with the state. This would require extensive programming to create, within our system and online, the fictitious name availability rules, database tables, and forms to register the name
New Section 60	Revoking a "Certificate of Authority"	We have a similar process but do not currently notify the Agent. We only notify the LLC.	This would bring LLCs out of conformity with the remainder of the Entity filings. This would increase costs and we would need time to program the system to generate the letter.
New Section 71, 75 and 80	HB 2261 does not repeal BETA	BETA rules are important across various Corp entity types.	To avoid confusion and duplication of processes, we would ask that New Sections 71, 75, and 80 be removed as they are covered by BETA.
New Section 88	Effective Date		We request an effective date of July 1, 2014 or later to ensure that we are able to implement and test changes to our computer system and processes.