

Substitute for HOUSE BILL No. 2207

AN ACT concerning limited liability companies; relating to series limited liability companies; amending K.S.A. 17-7663 and 17-7682 and repealing the existing sections.

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

New Section 1. (a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

(b) Notwithstanding anything to the contrary set forth in this section or under other applicable law, in the event that an operating agreement establishes or provides for the establishment of one or more series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company and if the limited liability company has filed a certificate of designation for each series which is to have limited liability under this section, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. The fact that the articles of organization contain the foregoing notice of the limitation on liabilities of a series and a certificate of designation for a series is on file in the office of the secretary of state shall constitute notice of such limitation on liabilities of a series. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification 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.

(c) Except in the case of a foreign limited liability company that has adopted an assumed name pursuant to K.S.A. 17-76,123, and amendments thereto, the name of the series with limited liability must contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted an assumed name pursuant to K.S.A. 17-76,123, and amendments thereto, the name of the series with limited liability must contain the entire name under which the foreign limited liability company has been admitted to transact business in this state.

(d) Upon the filing of the certificate of designation with the secretary of state setting forth the name of each series with limited liability, the series' existence shall begin, and copies of the filed certificate of designation marked with the filing date shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed have been complied with and that the series has been or shall be legally organized and formed under this act. If different from the limited liability company, the certificate of designation for each series shall list the names of the members if the series is member managed or the names of the managers if the series is manager managed. The name of a series with limited liability under subsection (b) may be changed by filing with the secretary of state a certificate of designation identifying the series whose name is being changed and the new name of such series. If not the same

as the limited liability company, the names of the members of a member managed series or of the managers of a manager managed series may be changed by filing a new certificate of designation with the secretary of state. A series with limited liability under subsection (b) may be dissolved by filing with the secretary of state a certificate of designation identifying the series being dissolved or by the dissolution of the limited liability company as provided in subsection (m). Certificates of designation may be executed by the limited liability company or any manager, person or entity designated in the operating agreement for the limited liability company.

(e) A series of a limited liability company will be deemed to be in good standing as long as the limited liability company is in good standing.

(f) The registered agent and registered office for the limited liability company in Kansas shall serve as the agent and office for service of process in Kansas for each series.

(g) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.

(h) A series may be managed by either the member or members associated with the series or by a manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(i) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(j) Except to the extent modified in this section, the provisions of this act which are generally applicable to limited liability companies, their managers, members and transferees shall be applicable to each particular series with respect to the operation of such series.

(k) Except as otherwise provided in an operating agreement, any event under this act or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(l) Except as otherwise provided in an operating agreement, any event under this act or an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(m) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with subsection (b) shall not affect the limitation on liabilities of such series provided by subsection (b). A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under article 76 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

(n) If a limited liability company with the ability to establish a series does not register to do business in a foreign jurisdiction for itself and certain of its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(o) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers or duties and has limited the liabilities of such series so that the debts, liabilities and obligations incurred, contracted for or otherwise ex-

isting with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on their own behalf may register to do business in the state in accordance with the provisions of K.S.A. 17-76,121, and amendments thereto. The limitation of liability shall be so stated on the application for admission as a foreign limited liability company and a certificate of designation shall be filed for each series being registered to do business in the state by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series of such a foreign limited liability company shall be enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

Sec. 2. K.S.A. 17-7663 is hereby amended to read as follows: 17-7663. As used in this act unless the context otherwise requires:

(a) “Articles of organization” means the articles of organization referred to in K.S.A. 17-7673, and amendments thereto, and the articles as amended.

(b) “Bankruptcy” means an event that causes a person to cease to be a member as provided in K.S.A. 17-7689, and amendments thereto.

(c) “Contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in such person’s capacity as a member.

(d) “Foreign limited liability company” means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(e) “Knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

(f) “Limited liability company” and “domestic limited liability company” means a limited liability company formed under the laws of the state of Kansas and having one or more members.

(g) “Operating agreement” means any agreement, written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business. A written operating agreement or another written agreement or writing:

(1) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the operating agreement:

(A) If such person ~~or~~ a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest~~},~~ executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee; or

(B) without such execution, if such person ~~or~~ a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest~~},~~ complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing and requests ~~orally, in writing or by other action such as payment for a limited liability company interest},~~ that the records of the limited liability company reflect such admission or assignment; and

(2) shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in subparagraph (a) of this paragraph, or by reason of its having been signed by a representative as provided in this act.

(h) “Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

(i) “Liquidating trustee” means a person carrying out the winding up of a limited liability company.

(j) “Majority in interest” means the affirmative vote or consent of the members who own more than 50% of the then current percentage or other interest in the profits of the limited liability company owned by all members entitled to vote thereon or the members in each class or group entitled to vote thereon as appropriate.

(k) “Manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of, a limited liability company pursuant to an operating agreement or similar instrument under which the limited liability company is formed.

(l) “Member” means a person who has been admitted to a limited liability company as a member as provided in K.S.A. 17-7686, and amendments thereto, or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(m) “Person” means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity, *or series thereof*, in its own or any representative capacity.

(n) “Personal representative” means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.

(o) “State” means the District of Columbia or the commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the state of Kansas.

Sec. 3. K.S.A. 17-7682 is hereby amended to read as follows: 17-7682. An operating agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for *any class, group or series of* members or limited liability company interests in connection with any amendment of the operating agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger or consolidation, or the sale of all or substantially all of the limited liability company’s assets. The district court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

Sec. 4. K.S.A. 17-7663 and 17-7682 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*