

Substitute for HOUSE BILL No. 2207

By Committee on Judiciary

2-10

1 AN ACT concerning limited liability companies; relating to series limited
2 liability companies; amending K.S.A. 17-7663 and 17-7682 and
3 repealing the existing sections.
4

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

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

14 (b) Notwithstanding anything to the contrary set forth in this section
15 or under other applicable law, in the event that an operating agreement
16 establishes or provides for the establishment of one or more series, and if
17 the records maintained for any such series account for the assets associated
18 with such series separately from the other assets of the limited liability
19 company, or any other series thereof, and if the operating agreement so
20 provides, and if notice of the limitation on liabilities of a series as
21 referenced in this subsection is set forth in the articles of organization of
22 the limited liability company and if the limited liability company has filed
23 a certificate of designation for each series which is to have limited liability
24 under this section, then the debts, liabilities, obligations and expenses
25 incurred, contracted for or otherwise existing with respect to a particular
26 series shall be enforceable against the assets of such series only, and not
27 against the assets of the limited liability company generally or any other
28 series thereof, and, unless otherwise provided in the operating agreement,
29 none of the debts, liabilities, obligations and expenses incurred, contracted
30 for or otherwise existing with respect to the limited liability company
31 generally or any other series thereof shall be enforceable against the assets
32 of such series. The fact that the articles of organization contain the
33 foregoing notice of the limitation on liabilities of a series and a certificate
34 of designation for a series is on file in the office of the secretary of state
35 shall constitute notice of such limitation on liabilities of a series. A series
36 with limited liability shall be treated as a separate entity to the extent set

1 forth in the articles of organization. Each series with limited liability may,
2 in its own name, contract, hold title to assets, grant security interests, sue
3 and be sued and otherwise conduct business and exercise the powers of a
4 limited liability company under this act. The limited liability company and
5 any of its series may elect to consolidate their operations as a single
6 taxpayer to the extent permitted under applicable law, elect to work
7 cooperatively, elect to contract jointly or elect to be treated as a single
8 business for purposes of qualification to do business in this or any other
9 state. Such elections shall not affect the limitation of liability set forth in
10 this section except to the extent that the series have specifically accepted
11 joint liability by contract.

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

22 (d) Upon the filing of the certificate of designation with the secretary
23 of state setting forth the name of each series with limited liability, the
24 series' existence shall begin, and copies of the filed certificate of
25 designation marked with the filing date shall be conclusive evidence,
26 except as against the state, that all conditions precedent required to be
27 performed have been complied with and that the series has been or shall be
28 legally organized and formed under this act. If different from the limited
29 liability company, the certificate of designation for each series shall list the
30 names of the members if the series is member managed or the names of
31 the managers if the series is manager managed. The name of a series with
32 limited liability under subsection (b) may be changed by filing with the
33 secretary of state a certificate of designation identifying the series whose
34 name is being changed and the new name of such series. If not the same as
35 the limited liability company, the names of the members of a member
36 managed series or of the managers of a manager managed series may be
37 changed by filing a new certificate of designation with the secretary of
38 state. A series with limited liability under subsection (b) may be dissolved
39 by filing with the secretary of state a certificate of designation identifying
40 the series being dissolved or by the dissolution of the limited liability
41 company as provided in subsection (m). Certificates of designation may be
42 executed by the limited liability company or any manager, person or entity
43 designated in the operating agreement for the limited liability company.

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

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

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

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

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

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

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

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

42 (m) Except to the extent otherwise provided in the operating
43 agreement, a series may be dissolved and its affairs wound up without

1 causing the dissolution of the limited liability company. The dissolution of
2 a series established in accordance with subsection (b) shall not affect the
3 limitation on liabilities of such series provided by subsection (b). A series
4 is terminated and its affairs shall be wound up upon the dissolution of the
5 limited liability company under article 76 of chapter 17 of the Kansas
6 Statutes Annotated, and amendments thereto.

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

12 (o) If a foreign limited liability company, as permitted in the
13 jurisdiction of its organization, has established a series having separate
14 rights, powers or duties and has limited the liabilities of such series so that
15 the debts, liabilities and obligations incurred, contracted for or otherwise
16 existing with respect to a particular series are enforceable against the
17 assets of such series only, and not against the assets of the limited liability
18 company generally or any other series thereof, or so that the debts,
19 liabilities, obligations and expenses incurred, contracted for or otherwise
20 existing with respect to the limited liability company generally or any
21 other series thereof are not enforceable against the assets of such series,
22 then the limited liability company, on behalf of itself or any of its series, or
23 any of its series on their own behalf may register to do business in the state
24 in accordance with the provisions of K.S.A. 17-76,121, and amendments
25 thereto. The limitation of liability shall be so stated on the application for
26 admission as a foreign limited liability company and a certificate of
27 designation shall be filed for each series being registered to do business in
28 the state by the limited liability company. Unless otherwise provided in the
29 operating agreement, the debts, liabilities and obligations incurred,
30 contracted for or otherwise existing with respect to a particular series of
31 such a foreign limited liability company shall be enforceable against the
32 assets of such series only, and not against the assets of the foreign limited
33 liability company generally or any other series thereof and none of the
34 debts, liabilities, obligations and expenses incurred, contracted for or
35 otherwise existing with respect to such a foreign limited liability company
36 generally or any other series thereof shall be enforceable against the assets
37 of such series.

38 Sec. 2. K.S.A. 17-7663 is hereby amended to read as follows: 17-
39 7663. As used in this act unless the context otherwise requires:

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

43 (b) "Bankruptcy" means an event that causes a person to cease to be a

1 member as provided in K.S.A. 17-7689, and amendments thereto.

2 (c) "Contribution" means any cash, property, services rendered or a
3 promissory note or other obligation to contribute cash or property or to
4 perform services, which a person contributes to a limited liability company
5 in such person's capacity as a member.

6 (d) "Foreign limited liability company" means a limited liability
7 company formed under the laws of any state or under the laws of any
8 foreign country or other foreign jurisdiction and denominated as such
9 under the laws of such state or foreign country or other foreign
10 jurisdiction.

11 (e) "Knowledge" means a person's actual knowledge of a fact, rather
12 than the person's constructive knowledge of the fact.

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

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

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

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

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

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

40 (h) "Limited liability company interest" means a member's share of
41 the profits and losses of a limited liability company and a member's right
42 to receive distributions of the limited liability company's assets.

43 (i) "Liquidating trustee" means a person carrying out the winding up

1 of a limited liability company.

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

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

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

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

21 (n) "Personal representative" means, as to a natural person, the
22 executor, administrator, guardian, conservator or other legal representative
23 thereof and, as to a person other than a natural person, the legal
24 representative or successor thereof.

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

28 Sec. 3. K.S.A. 17-7682 is hereby amended to read as follows: 17-
29 7682. An operating agreement or an agreement of merger or consolidation
30 may provide that contractual appraisal rights with respect to a limited
31 liability company interest or another interest in a limited liability company
32 shall be available for *any class, group or series of* members or limited
33 liability company interests in connection with any amendment of the
34 operating agreement, any merger or consolidation in which the limited
35 liability company is a constituent party to the merger or consolidation, or
36 the sale of all or substantially all of the limited liability company's assets.
37 The district court shall have jurisdiction to hear and determine any matter
38 relating to any such appraisal rights.

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

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

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