

Approved: April 28, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 12:00 on March 21, 1995 in Room 519-S of the Capitol.

All members were present except:

Representative David Adkins - Excused
Representative Doug Spangler - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

SB 336 - Kansas Limited Liability Company Act.

Chairman O'Neal announced that both proponents and opponents of the bill got together and worked out a compromise. Staff provided the committee with a balloon amendment (Attachment 1), which took six sections from the original bill that they felt needed to be addressed at this time.

Representative Mays made a motion to adopt the balloon amendment. Representative Graeber seconded the motion. The motion carried.

Representative Mays made a motion to report **House Substitute for SB 336** favorably for passage. Representative Graeber seconded the motion. The motion carried. Representative's Garner & Haley requested that they be recorded as voting no.

By Committee on Judiciary

AN ACT amending the Kansas limited liability company act.

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

Section 1. (a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report showing the financial condition of the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. If the limited liability company applies for an extension of time for filing its annual income tax return under the internal revenue code, the limited liability company shall also apply, not more than 90 days after the due date of its annual report, to the secretary of state for an extension of the time for filing its report and an extension shall be granted for a period of time corresponding to that granted under the internal revenue code. The application shall include a copy of the application to income tax authorities.

(b) The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited liability company;
- (2) a reconciliation of the capital accounts for the preceding taxable year as required to be reported on the federal partnership return of income;
- (3) a balance sheet showing the financial condition of the limited liability company at the close of business on the last

day of its tax period next preceding the date of filing. Domestic limited liability companies shall also include a list of the members owning at least 5% of the capital of the company, with the post office address of each.

(c) The annual report shall be signed by a member of the limited liability company and forwarded to the secretary of state. At the time of filing the report, the limited liability company shall pay to the secretary of state an annual franchise tax in an amount equal to \$1 for each \$1,000 of the net capital accounts located in or used in this state at the end of the preceding taxable year as required to be reported on the federal partnership return of income, except that no annual tax shall be less than \$20 or more than \$2,500.

(d) No limited liability company shall be required to file its first annual report under this act, or pay any annual franchise tax required to accompany such report, unless such limited liability company has filed its articles of organization or application for authority at least six months prior to the last day of its tax period. If any limited liability company files with the secretary of state a notice of change in its tax period and the next annual report filed by such limited liability company subsequent to such notice is based on a tax period of less than 12 months, the annual tax liability shall be determined by multiplying the annual franchise tax liability for such year by a fraction, the numerator of which is the number of months or any portion thereof covered by the annual report and the denominator of which is 12, except that the tax shall not be less than \$20.

Sec. 2. (a) A limited liability company shall provide members and their agents and attorneys access to any of its books and records at reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to books and records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and

material, for copies of records furnished.

(b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement of this act; and

(2) on demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member has the right upon signed record given to the limited liability company to obtain at the company's expense a copy of any operating agreement in record form.

Sec. 3. A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled. A member ceases to be a member upon transfer of all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed.

Sec. 4. (a) A transferee of a distributional interest may become a member if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or the majority of all other members consent.

(b) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this act. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions and for obligations to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the

time the transferee becomes a member and is not personally liable for any obligation of the limited liability company incurred before the transferee's admission as a member.

(c) Whether or not a transferee of a distributional interest becomes a member under subsection (a), the transferor is not released from liability to the limited liability company under the operating agreement or this act.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company business, require access to information concerning company transactions, or inspect or copy any of the company's books and other records.

(e) A transferee who does not become a member is entitled to:

(1) Receive, upon dissolution and winding up of the limited liability company business, a statement of account only from the date of the latest statement of account agreed to by all the members; and

(2) seek a judicial determination that it is equitable to wind up the company business if the company was a term limited liability company at the time of the transfer or entry of the charging order that gave rise to the transfer and the duration stated in the articles of organization has expired.

(f) A limited liability company need not give effect to a transfer until it has notice of the transfer.

Sec. 5. A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

(a) An event specified in the operating agreement;

(b) consent of the number or percentage of members specified in the operating agreement;

(c) dissociation of a member-manager or, if none, a member of an at-will company, and dissociation of a member-manager or, if none, a member of a company having a specified term but only if the dissociation occurred before the expiration of the specified term, but the company is not dissolved and required to be wound up by reason of the dissociation:

(1) If, within 90 days after the dissociation, a majority in interest of the remaining members agree to continue the business of the company; or

(2) the business of the company is continued under a right to continue stated in the operating agreement;

(d) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(e) on application by a member, upon entry of a judicial decree that:

(1) The economic purpose of the company is likely to be unreasonably frustrated;

(2) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

(3) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(4) a dissociated member has the right to have the company dissolved and its business wound up for failure to cause the member's distributional interest to be purchased; or

(5) the managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioning member;

(f) on application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:

(1) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(2) at any time, if the company was at will at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(g) the expiration of a specified term.

Sec. 6. When reinstatement is effective, it relates back to and takes effect as of the effective date of the forfeiture and the company may resume its business as if the forfeiture had never occurred.

Sec. 7. As provided in this act:

(a) "Corporation" means a corporation under Kansas general corporation code, a predecessor law or comparable law of another jurisdiction.

(b) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(c) "Limited partner" means a limited partner in a limited partnership.

(d) "Limited partnership" means a limited partnership created under the revised uniform limited partnership act, a predecessor law, or comparable law of another jurisdiction.

(e) "Partner" includes a general partner and a limited partner.

(f) "Partnership" means a general partnership under the uniform partnership act, a predecessor law, or comparable law of another jurisdiction.

(g) "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

(h) "Shareholder" means a shareholder in a corporation.

Sec. 8. (a) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the

conversion of the interests of the partners, or a combination thereof.

(d) After a conversion is approved, the partnership or limited partnership shall file articles of organization in the office of the secretary of state which contain:

(1) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;

(2) its former name;

(3) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (b); and

(4) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion took effect.

(e) In the case of a limited partnership, the filing of articles of organization under subsection (d) cancels its certificate of limited partnership as of the date the conversion took effect.

(f) A conversion takes effect when the articles of organization are filed in the office of the secretary or at any later date specified in the articles of organization.

(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

(h) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

Sec. 9. (a) A partnership or limited partnership that has been converted pursuant to this act is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership is vested in the limited liability company;

(2) all debts, liabilities and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(3) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting partnership or limited partnership are vested in the limited liability company; and

(5) except as otherwise provided in the agreement of conversion, all of the partners of the converting partnership continue as members of the limited liability company.

Sec. 10. (a) Pursuant to a plan of merger approved under subsection (c), a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

(b) A plan of merger must set forth:

(1) The name of each entity that is a party to the merger;

(2) the name of the surviving entity into which the other entities will merge;

(3) the type of organization of the surviving entity;

(4) the terms and conditions of the merger;

(5) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part; and

(6) the street address of the surviving entity's principal place of business.

(c) A plan of merger must be approved:

(1) In the case of a limited liability company that is a party to the merger, by the members representing the percentage

of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership or, if provision is not made in the operating agreement, by all the members;

(2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion; and

(4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger is effective upon the filing of the certificate of merger with the secretary of state, or at such later date as the certificate may provide.

Sec. 11. (a) After approval of the plan of merger, unless the merger is abandoned, a certificate of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The certificate must set forth:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) for each limited liability company that is to merge, the date its articles of organization were filed with the secretary;

(3) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) the name and address of the surviving limited liability company or other surviving entity;

(5) the effective date of the merger;

(6) if a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary or, if an application has not been filed, a statement to that effect; and

(8) if the surviving entity is not a domestic entity, an agreement that the surviving entity may be served with process in the state of Kansas in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state which is to merge, and for the enforcement, as provided in this act, of the right of members of any limited liability company to receive payment for their interest against the surviving entity. The surviving entity shall irrevocably appoint the secretary of state as such entity's agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to such entity to the secretary of state.

(b) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary.

(c) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

(d) A certificate of merger operates as an amendment to the limited liability company's articles of organization.

Sec. 12. (a) When a merger takes effect:

(1) The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) all property owned by each of the limited liability companies and other entities that are party to the merger vests

in the surviving entity;

(3) all debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(5) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

(b) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(c) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this act or pay its liabilities and distribute its assets pursuant to this act.

(d) A certificate of merger serves as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

Sec. 13. The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, and the provisions of subsection (a) of K.S.A. 17-7510, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required franchise tax, shall be applicable to the authority of any foreign limited liability company which fails to file its annual report or pay the franchise tax within 90 days of the time prescribed in this section for filing and paying the same. Whenever the authority of a foreign limited liability company is forfeited for failure to file an annual report or to pay the required franchise tax, the authority of the foreign limited liability company may be reinstated by filing a certificate of reinstatement, in the

manner and form to be prescribed by the secretary of state and paying to the secretary of state all fees and taxes, including any penalties thereon, due to the state. The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of extension, restoration, renewal or revival of a corporation's articles of incorporation. When reinstatement is affective, it relates back to and takes effect as of the effective date of the forfeiture and the company may resume its business as if the forfeiture had never occurred.

Sec. 14. The provisions of sections 1 through 13 shall be part of and supplemental to the Kansas limited liability company act, K.S.A. 1994 Supp. 17-7601, et seq., and amendments thereto.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.