

Approved: _____

Date

3-17-99

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 16, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused
Representative Clark Schultz - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Avis Swartzman, Revisor of Statutes
Cindy Wulfschuhle, Committee Secretary

Conferees appearing before the committee:

Phillip Mellor, Kansas Judicial Council
Judge Steven Leben, Overland Park
Leonard Hall, Assistant City Attorney, Olathe
Kim Gulley, Kansas League of Municipalities
Randy Hearrell, Judicial Council
Bill Fleming, Kansas Bar Association
Jim Daily, Kansas Law Enforcement Training Commission
Kurt Ford, Hesston Chief of Police
Richard Old, Wabaunsee County Sheriff
Kathy Porter, Office of Judicial Administration
Tim Chambers, Reno County Attorney

Hearings on **HB 2410 - appraisals and compensation for takings pursuant to power of eminent domain**, were opened.

Phillip Mellor, Kansas Judicial Council, appeared before the committee as a proponent of the bill. He explained to the committee each section of the proposed bill. The first section would require the courts to appoint appraisers. The second section prohibits the "woodshedding" process so there would be fair and equal opportunity by both parties to participate in the presentation of appraisal materials. The last section of the bill suggest that more than one of the following approaches be used for appraisals: comparable sales, costs approach or income approach. Currently, if a comparable sales appraisal is available then the court must use that method. (Attachment 1)

Judge Steven Leben, Overland Park, appeared before the committee in opposition of two portions of the bill. The first was the requirement that the three appointed appraisers have experience in the valuation of real estate. The next was the prohibition of all contact between the appraisers and either the party, without the other party being given notice of the contact. (Attachment 2)

Leonard Hall, Assistant City Attorney, Olathe, appeared before the committee in opposition to the bill. His main objection was the definition of fair market value which would allow the court appointed appraiser to testify in a jury trial. The jury could then choose between the different appraisal methods or a combination of several. He provided the committee with a suggested amendment regarding the definition of fair market value. (Attachment 3)

Kim Gulley, Kansas League of Municipalities, appeared before the committee as an opponent of the bill. She was opposed to Section 3 of the bill that requires the appraisers to use the fair market value approach. She believes that the appraisers need to have discretion when dealing with appraised values. (Attachment 4)

Randy Hearrell, Judicial Council, address the committee and stated that this bill is a matter of fairness and questioned why the state shouldn't use the same approach for takings as it does for property taxes.

Hearings on **HB 2140** were closed.

Hearings on **HB 2276 - limited liability company act**, were opened.

Bill Fleming, Kansas Bar Association, appeared before the committee as a proponent of the bill. Kansas corporation law is patterned after Delaware law. However, it does not follow Delaware code in all cases but does modify and eliminate some provisions based on what the Kansas Bar believes is appropriate for Kansas. The bill repeals the existing limited liability code and adopts portions of the Delaware code. (Attachment 5)

Hearings on **HB 2276** were closed.

Hearings on **HB 2278 - law enforcement training**, were opened.

Jim Daily, Kansas Law Enforcement Training Commission, appeared before the committee as a proponent of the bill. He stated that the law doesn't require reserve officers be trained but believes that the job is too detailed and dangerous to have them go untrained. (Attachment 6)

Kurt Ford, Hesston Chief of Police, appeared before the committee in support of the bill. He stated that reserves are currently "learning as they go" which is a dangerous process for himself and those around him. (Attachment 7)

Richard Old, Wabaunsee County Sheriff, appeared before the committee as a proponent of the bill. The possibility of having to make an arrest, and responding to dangerous calls are becoming greater. Therefore, adequate training for every officer and reserve is important.

Kim Gulley, Kansas League of Municipalities, appeared before the committee as an opponent to the bill. She stated that there is no prohibition from sending reserve officers for training. Mandating training would be cost-prohibitive for cities and it would be likely that those with full time jobs would not be able to take time off for the training. (Attachment 8)

Hearings on **HB 2278** were closed.

The Chairman stated that hearings on **HB 2372 - retirement system for justices and judges retirement ages** were postponed due to the courts needing more information from judges on the issue.

Hearings on **HB 2450 - judicial branch of state government budget**, were opened.

Chairman O'Neal expressed concern that since the judicial branch is a co-equal branch of government it should not have to go through the same process as state agency budgets. They should have the opportunity to have the legislature look at their whole budget without the governor cutting it first.

Kathy Porter, Office of Judicial Administration, appeared before the committee in support of the proposed bill. She stated that before court unification the Supreme Court sent their budget directly to the legislature. Currently, their budget goes to the Governor who makes cuts and then to the Appropriations Committee who also has the ability to make budget cuts. (Attachment 9)

Hearings on **HB 2450** were closed.

Hearings on **HB 2471 - establishing a district attorney's office in Reno county**, were opened.

Tim Chambers, Reno County Attorney, appeared before the committee in support of the bill. He explained to the committee that Reno County is the only judicial district, with the exception of Cowley County, that does not have a district attorneys office. (Attachment 10)

Hearings on **HB 2471** were closed.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for February 17, 1999.

FLEESON, GOOING, COULSON & KITCH, L.L.C.

LAWYERS

CARL A. BELL
GERRIT H. WORMHOUDT
WILLARD B. THOMPSON
THOMAS D. KITCH
J. ERIC ENGSTROM
STEPHEN E. ROBISON
RON CAMPBELL
GREGORY J. STUCKY
CHARLES E. MILLSAP
EDWARD J. HEALY
LINDA K. CONSTABLE
WILLIAM P. TRETBAR
SUSAN P. SELVIDGE

DIXIE F. MADDEN
THOMAS J. LASATER
DAVID G. SEELY
MARY E. MAY
STEPHEN M. STARK
LYNDON W. VIX
WILLIAM L. TOWNSLEY III
JOHN T. STEERE
SCOTT D. JENSEN
JORDAN E. CLAY
JOHN R. GERDES
KENT A. MEYERHOFF

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DALE M. STUCKY
JAMES R. BOYD
PHILLIP MELLOR
OF COUNSEL

HOWARD T. FLEESON
(1895-1957)

HOMER V. GOOING
(1894-1986)

WAYNE COULSON
(1910-1985)

PAUL R. KITCH
(1918-1987)

DONALD R. NEWKIRK
(1919-1997)

February 15, 1999

Members of the House Judiciary Committee

I am Phillip Mellor, of Wichita, Chairman of the Eminent Domain Subcommittee of the Judicial Council. The subcommittee is composed of lawyers who represent landowners, two major cities, two major public utilities and the Kansas Department of Transportation. My comments are made in support of the 1999 House Bill No. 2140.

The Eminent Domain Procedure Act was adopted in 1963 and, except for minor changes, has served well not only to control the procedures to be followed in administering the law, but to impose substantive rules relating to landowner's rights to their constitutionally guaranteed just compensation.

The March 19, 1997, Report to the Legislative Post Audit Committee reviewing the Department of Transportation's acquisitions of right-of-way for highway projects pointed out a number of weaknesses in the existing condemnation law. The League of Municipalities has made recommendations which we have taken under consideration and landowner's and condemnor's attorneys from throughout the state have made suggestions and recommendations which have likewise been considered.

SECTION 1.

You will recall that the act requires that upon the filing of a petition for condemnation, the court sets a time for considering the petition (K.S.A. 26-502). The plaintiff must then give notice to interested parties of the time for consideration of the petition and appointment of appraisers (K.S.A. 26-503). If the judge finds "from the petition" that plaintiff has the power to condemn and that the taking is necessary for the lawful purposes of the plaintiff, then the judge shall appoint appraisers. Please note that the determination of the power and right to take is made from the petition itself; there is no "hearing" and no evidence is

introduced as to those questions. The notice which was given to the parties must relate to the appointment of appraisers, else why were they given a notice and an opportunity to be present and, presumably, to participate in the proceedings? Most judges, but not all of them are glad to have the participation of the parties in nomination of or objection to specific persons to serve as appraisers. We believe it should be the invariable rule. One of the problems addressed by the Performance Audit Report is the appointment by judges of persons who have no qualifications or experience in the appraisal of real property. Participation by the parties will help alleviate that apparent problem. We are aware of a case in which the appraisers appointed by the judge believed themselves to be incompetent to do the work and so hired their own experts to advise them. The parties were not given any opportunity to participate in the analysis of such outside advice or indeed even to know the identity of the advisors. In another case, the court appointed a man who receives 40% of his annual income as a hired appraiser by the plaintiff. We submit then that the parties, both landowners and condemners, should be permitted to participate to some degree in the selection of appraisers. Our proposal would not impair the court's absolute discretion in selecting appraisers and, in our experience, would not cause any delay in the proceedings because such hearings normally take no more than thirty minutes.

SECTION 2.

Section 2. of the bill prohibits "woodshedding" and is, unfortunately, necessary in many instances and is designed to insure fair and equal opportunity by both parties to participate in the presentation of appraisal material to the court-appointed appraisers.

SECTION 3.

The most significant part of the bill is contained in Section 3. As you may be aware, the Kansas Real Estate Appraisal Board adopts as its standards of appraisal practice, the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation. Those standards specify that in normal appraisals of real estate, the appraiser is required to use the three classic approaches to value or explain why it is inappropriate to do so. Those approaches are: the comparable sales

Members of the House Judiciary Committee
February 15, 1999
Page 3

approach, the cost approach and the income approach. The Appraisal Institute, which is the oldest, most prestigious organization of its kind, makes similar requirements as does every other nationally recognized appraisal organization. The principal is expressed in our tax appraisal statute, K.S.A. 79-503a (appendix 1). In Kansas condemnation cases, however, we have judge-made law which cuts across the grain of all professional standards by ruling that if comparable sales exist, then that approach must be used to the exclusion of the others.

That rule, perhaps, helps to explain the large number of landowners who have expressed dissatisfaction at the appraisal process applied to their properties in condemnation cases. The 1997 Legislative Post Audit Committee Report touches on that subject with respect to the acquisition of right-of-way for highway projects by the Kansas Department of Transportation. It is a sad comment on the perception of the procedure when only 53.5% of landowners polled felt they received fair treatment. This might also help explain the very wide differences between the condemnor's appraisal and the awards of the court-appointed appraisers (see sample sheets attached from Sedgwick, Reno, Shawnee, Cowley and Crawford counties, appendices 2 - 12).

Right now, when new highway construction appears to be essential to the continued economic growth of the state, is a good time to assure more consistent fairness in the appraisal of land subject to condemnation and more perception of fairness by the citizens of Kansas.

Very truly yours,

FLEESON, GOOING, COULSON & KITCH, L.L.C.

By 

Phillip Mellor

PSM:ljv
Enc.

- (h) rental or reasonable rental values;
- (i) sale value on open market with due allowance to abnormal inflationary factors influencing such values;
- (j) restrictions imposed upon the use of real estate by local governing bodies, including zoning and planning boards or commissions; and
- (k) comparison with values of other property of known or recognized value. The assessment-sales ratio study shall not be used as an appraisal for appraisal purposes.

The appraisal process utilized in the valuation of all real and tangible personal property for ad valorem tax purposes shall conform to generally accepted appraisal procedures which are adaptable to mass appraisal and consistent with the definition of fair market value unless otherwise specified by law.

History: L. 1982, ch. 391, § 2; L. 1990, ch. 346, § 3; L. 1995, ch. 254, § 5; L. 1997, ch. 126, § 42; July 1.

Cross References to Related Sections:

Private property protection act, see 77-708.

Research and Practice Aids:

Taxation = 348(3).
C.J.S. Taxation § 411.

Law Review and Bar Journal References:

"The Kansas Property Tax: Understanding and Surviving Reappraisal," P. John Brady, Brian T. Howes, and Greg L. Musil, 57 J.K.B.A. No. 3, 23, 27 (1988).

"Reappraisal—How Long Will It Last?" Bruce Landeck, 58 J.K.B.A. No. 1, 15, 18 (1989).

"Kansas Property Classification and Reappraisal: The 1986 Constitutional Amendment and Statutory Modifications," Nancy Ogle, 29 W.L.J. 26, 30, 47 (1989).

Attorney General's Opinions:

Factors for determining fair market value of property. 80-82.

Public utilities valuation of real and personal property. 80-83.

Powers and duties of county appraisers; removal from office. 82-270.

Classification of property; constitutionality. 90-10.

Powers and duties of director of property valuation; force and effect of directives. 91-134.

Effect of failure to consider factors to determine fair market value. 92-12.

Use of real estate ratio study as evidence of fair market value for tax purposes. 94-69.

Valuation of property in year following reduction on appeal; effect of 79-1460. 95-71.

Valuation of real property; change in value without physical inspection. 96-81.

CASE ANNOTATIONS

1. Section considered in determining validity of assessment of real property for uniformity and equality. Board of County Comm'rs v. Greenhaw, 241 K. 119, 126, 734 P.2d 1125 (1987).

79-503a. Fair market value defined; allowable variance; factors to be considered in determining fair market value; generally accepted appraisal procedures to be utilized. "Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion. For the purposes of this definition it will be assumed that consummation of a sale occurs as of January 1.

Sales in and of themselves shall not be the sole criteria of fair market value but shall be used in connection with cost, income and other factors including but not by way of exclusion:

- (a) The proper classification of lands and improvements;
- (b) the size thereof;
- (c) the effect of location on value;
- (d) depreciation, including physical deterioration or functional, economic or social obsolescence;
- (e) cost of reproduction of improvements;
- (f) productivity;
- (g) earning capacity as indicated by lease price, by capitalization of net income or by absorption or sell-out period;

CONFIRMATION WORKSHEET

file

1-5

PROJECT: 254-87 K5058-01, P1

COURT APPOINTED
APPRAISERS:

RICHARD KESSLER, TIM GOODPASTURE
GRANT TIDEMANN

DCC#

95 C 1132-C/A 2132

FILED:

Nov. 6, 1995

COUNTY:

SEDGWICK

REVIEW APPRAISER:

ROBERT WALTERS

AGENT:

COATES FIELD SERVICES
(Mary Elliott)

CITY:

KECHI

APPRAISER:

JOHN COOPER,
THOMAS MARTIN AND ROGER TURNER

ATTORNEY:

JOHN STRAHAN

Settlement

MAI

TRACT	OWNER	APPROVED APPRAISAL	DATE COURT RECEIVED MONEY	COURT AWARD	DIFFERENCE	PERCENTAGE
2	Thornton Thomisson	22,350.00	<i>175,000</i>	169,700.00	147,350.00	659%
3	Jay Rex Douglas	25,710.00		48,240.00	22,530.00	88%
4	Walz H&H Constr.	10,965.00		17,825.00	6,860.00	63%
6	S.A. Walz	22,590.00		42,380.00	19,790.00	88%
9	Daniel Phillippi	156,000.00		275,300.00	119,300.00	76%
46	Michael Logan	29,485.00		32,955.00	3,470.00	12%
47	Double W Inc.	790.00		48,065.00	47,275.00	5984%
		\$267,890.00 TOTAL APPRAISAL		\$634,465.00 TOTAL COURT AWARD	\$366,575.00 TOTAL OVER	

APPENDIX 2

CONFIRMATION WORKSHEET

1-10

PROJECT: 254-87 K5058-01,P2

COURT APPOINTED
APPRAISERS:

RICHARD KESSLER, TIM GOODPASTURE,
GRANT TIDEMANN

DCC#

95 C 1132-C/A 2133

FILED:

Nov. 6, 1995

COUNTY: SEDGWICK

REVIEW APPRAISER: ROBERT WALTERS

AGENT: COATES FIELD SERVICES
(Mary Elliott)

CITY: N/A

APPRAISER: JOHN COOPER

ATTORNEY: J. STRAHAN/R. ASH

THOMAS MARTIN, ROGER TURNER

TRACT	OWNER	APPROVED APPRAISAL	DATE COURT RECEIVED MONEY	COURT AWARD	DIFFERENCE	PERCENTAGE
11	Sammy H. Kouri	14,200.00		86,930.00	72,730.00	512%
14	Central Development	6,895.00		15,690.00	8,795.00	128%
22	Albert Lies	28,950.00		28,950.00	0.00	0%
24	D.J. Fisher	31,060.00		66,580.00	35,520.00	114%
27	Victor Lygrisse	22,810.00	70,000	56,190.00	33,380.00	146%
37	Coy J. Burge	520,000.00		744,676.00	224,676.00	43%
38	Gary Fisher	9,040.00		111,560.00	102,520.00	1134%
40	Ted L. Lefler	37,235.00		79,060.00	41,825.00	112%
		\$623,915.00		\$1,189,636.00	\$375,101.00	
		TOTAL APPRAISAL		TOTAL COURT AWARD	TOTAL OVER	

CONDEMNATION WORKSHEET

file

1-7

PROJECT: 96-87 K 4459-01

COURT APPOINTED
APPRAISERS:

ED TAYLOR, GRANT TIDEMANN and ROGER ZERENER

DCC#

95 C 1832 C/A 2190

FILED:

Oct. 16, 1995

COUNTY:

SEDGWICK

REVIEW APPRAISER:

CINDY WILSON

AGENT:

COATES FIELD SERVICES

(Mary Elliott)

CITY:

N/A

APPRAISER:

HAL ERWIN

ATTORNEY:

RUSS ASH

TRACT	OWNER	APPROVED APPRAISAL	DATE COURT RECEIVED MONEY	COURT AWARD	DIFFERENCE	PERCENTAGE
9 21	Homer Nagle Jarold Tucker	3,500.00		20,000.00	16,500.00	471%
		116,165.00		240,000.00	123,835.00	107%
		119,665.00		260,000.00	140,335.00	
		TOTAL APPRAISAL		TOTAL COURT AWARD	TOTAL OVER	

CONDEMNATION WORKSHEET

8-1

PROJECT: 96-78 K 4458-01

COURT APPOINTED APPRAISERS: JOHN OSWALD, E.E. FRIZELL, & W.D. KIMMEL

DCC# 95 C 222 - C/A 2198 FILED: 12/12/95

COUNTY: RENO REVIEW APPRAISER: CINDY WILSON AGENT: A.J. SANTORO (Mary Elliott)

CITY: N/A APPRAISER: SUSAN MITCHELL ATTORNEY: J. STRAHAN/R. ASH

TRACT	OWNER	APPROVED APPRAISAL	DATE COURT RECEIVED MONEY	COURT AWARD	DIFFERENCE	PERCENTAGE
4	George Schlickau	73,520.00		245,000.00	171,480.00	233%
		73,520.00		245,000.00	171,480.00	
		TOTAL APPRAISAL		TOTAL COURT AWARD	TOTAL OVER	

APPENDIX 5

Lotus 2
"Renoschl"

CONDEMNATION WORKSHEET

1-9

PROJECT: 77-18 K4431-01 PT2

COURT APPOINTED
APPRAISERS: JERRY MUNSON, ROBERT HAUBER, RAYMOND KING

DCC# 95 C 57W-C/A 2169 FILED: 7-10-95

COUNTY: COWLEY REVIEW APPRAISER: RANDY SEALE AGENT: RON PROCHAZKA (ROB STORK)

CITY: N/A APPRAISER: ROBERT TAGGART MA

TRACT	OWNER	APPROVED APPRAISAL	DATE COURT RECEIVED MONEY	COURT AWARD	DIFFERENCE	PERCENTAGE
14	John Childs	3,080.00		6,080.00	3,000.00	97%
18	Lester Mitchell	11,915.00		13,000.00	1,085.00	9%
20	Barbara DeMars	6,010.00		7,010.00	1,000.00	17%
22	Raymond Walker	2,350.00		3,900.00	1,550.00	66%
24	McFarland Gravel	98,825.00		1,065,417.00	966,592.00	978%
25	Kenneth Graves	22,050.00		64,250.00	42,200.00	191%
27	Pauline Warren	20,210.00		30,000.00	9,790.00	48%
28	Glen Remsberg	12,240.00		15,920.00	3,680.00	30%
29	W. M. Lowrey	10,575.00		37,240.00	26,665.00	252%
		187,255.00		1,242,817.00	1,055,562.00	
		TOTAL APPRAISAL		TOTAL COURT AWARD	TOTAL OVER	

settled for 1.4 million

plus for 7,000,000

APPENDIX 6

CONDEMNATION WORKSHEET

1-10

PROJECT: 77-18 K4431-01 PT1

COURT APPOINTED
APPRAISERS:

JERRY MUNSON, ROBERT HAUBER, RAYMOND KING

DCC#

95 C 57W-C/A 2152

FILED: 7-10-95

COUNTY: COWLEY

REVIEW APPRAISER: RANDY SEALE

AGENT: RON PROCHAZKA
(ROB STORK)

CITY: ARKANSAS CITY

APPRAISER: ROBERT TAGGART

TRACT	OWNER	APPROVED APPRAISAL	DATE COURT RECEIVED MONEY	COURT AWARD	DIFFERENCE	PERCENTAGE
11	Willlam Bush	7,030.00		9,000.00	1,970.00	28%
		7,030.00		9,000.00	1,970.00	
		TOTAL APPRAISAL		TOTAL COURT AWARD	TOTAL OVER	

CONDEMNATION WORKSHEET

14-Oct-96

ROUTE	COUNTY	PROJECT	C/A	TRACT	LAST NAME	FIRST NAME	DATE PAID	APPROVED APPRAISAL	COURT AWARD
4	89	K 3362-08	2210						
				6	ROCKERS	FLOYD	4/4/96 1.7x	\$2,795.00 1720 ¹	\$20,000.00 616 ⁹⁰
				7	ALBOTT	W.L.	4/4/96 8x	\$1,860.00 13140	\$15,000.00 706 ⁹⁰
				9	JADA INDUSTRIES		4/4/96 1.9x	\$5,980.00 5420	\$11,400.00 91 ⁹⁰
				10	NEWSTROM	MERLYN	4/4/96 1.5x	\$6,785.00 3521 ¹	\$45,000.00 563 ⁹⁰
				13	BROADWALK LIMITED		4/4/96 2.9x	\$1,745.00 325 ¹	\$5,000.00 187 ⁹⁰
				14	HANDY	JENNIFER	4/4/96 4x	\$1,160.00 5940	\$7,000.00 503 ⁹⁰
				15	BEAVER	HAIRM	4/4/96 3.9x	\$5,150.00 14850	\$20,000.00 288 ⁹⁰
				17	NEFF	CLINTON	4/4/96 2.5x	\$8,425.00 1251 ¹	\$21,000.00 149 ⁹⁰
				18	ADAMS	JANE	4/4/96 6.9x	\$2,880.00 17120	\$20,000.00 594 ⁹⁰
				19	TOOMAY	SETH	4/4/96	\$2,255.00	\$20,000.00
				21	BAILEY	OLLIE	4/4/96	\$2,190.00	\$32,000.00
				23	WYATT	ALEXANDER	4/4/96	\$4,570.00	\$20,000.00
				24	HAROLD	WILLIAM	4/4/96	\$2,485.00	\$25,000.00

Shawnee County

1-12

ROUTE	COUNTY	PROJECT	C/A	TRACT	LAST NAME	FIRST NAME	DATE PAID	APPROVED APPRAISAL	COURT AWARD
				26	MARTIN	DAVID	4/4/96	\$2,820.00	\$18,700.00
				27	MANROSE	WILLIAM	4/4/96	\$4,625.00	\$25,000.00
				28	WRIGHT	JEFF	4/4/96	\$1,530.00	\$20,000.00
				29	HINKLE	MORRIS	4/4/96	\$2,920.00	\$17,000.00
				30	HABERKORN	ROBERT	4/4/96	\$1,830.00	\$25,000.00
				32	SYNDER	JANET	4/4/96	\$2,940.00	\$21,000.00
				34	GIESE	RICHARD	4/4/96	\$2,740.00	\$15,000.00
				35	HANDY	ROGER	4/4/96	\$4,440.00	\$15,000.00
				36	PRICE	GEORGE	4/4/96	\$2,120.00	\$21,000.00
				37	TRAXLER	DALE	4/4/96	\$4,945.00	\$23,000.00
				38	CAREY	ARTHUR	4/4/96	\$4,015.00	\$27,000.00
				39	SCHWANKE	DONALD	4/4/96	\$5,300.00	\$35,000.00
				41	NORDSTROM	ELMER	4/4/96	\$13,600.00	\$35,000.00
				42	MOORE	MARGARET	4/4/96	\$18,200.00	\$18,500.00
				43	JACOB	L. MERRILL	4/4/96	\$1,480.00	\$30,000.00

APPENDIX 9

ROUTE	COUNTY	PROJECT	C/A	TRACT	LAST NAME	FIRST NAME	DATE PAID	APPROVED APPRAISAL	COURT AWARD
				44	PENDLAND	DOROTHY	4/4/96	\$975.00	\$3,500.00
				49	BRADFORD	NOBLE	4/4/96	\$600.00	\$10,000.00
				50	SHELINBARGER	BOB	4/4/96	\$5,760.00	\$30,000.00

District Court Case Number: 95 CV 1279

Date To Legal: 10/4/95 Attorney: STRAHAN
 Consideration Hearing: 1/5/96 Count Appraiser 1: LEWIS
 Appraisal Hearing: 3/5/96 Court Appraiser 2: SCHELLBACHER
 Appraisal Report Filed: 4/2/96 Court Appraiser 3: MCBRIDE
 Money Deposited in Court: 4/4/96

Agent: Appraiser: Reviewer:
 Miller RANDY SEALE CRAIG

CONDEMNATION WORKSHEET

22-Aug-96

ROUTE	COUNTY	PROJECT	C/A	TRACT	LAST NAME	FIRST NAME	DATE PAID	APPROVED APPRAISAL	COURT AWARD
4	89	K 3362-07	2223						
				4	NOTT	GARY	8/9/96	\$11,280.00 11720	\$23,000.00 10470
				5	ATWOOD	JAMES	8/9/96	\$11,970.00 18030	\$30,000.00 15170
				7	LONG	VERON	8/9/96	\$22,735.00 34260	\$57,000.00 15190
				8	FRITZE	JOE	8/9/96	\$5,110.00 19890	\$25,000.00 38470
				15	WILLIAMS	DANNEY	8/9/96	\$4,975.00 25025	\$30,000.00 50370
				16	MARTIN	GEORGE	8/9/96	\$2,860.00 9140	\$12,000.00 32070
				17	COKE	DANA	8/9/96	\$560.00 6440	\$7,000.00 115070
				20	TAYLOR	DENNIS	8/9/96	\$1,650.00 11350	\$16,000.00 87070
				23	ROSS	CHRIS	8/9/96	\$11,305.00 8695	\$20,000.00 7770
				33	BARGER	JAMES	7/17/96	\$108,000.00 87000	\$195,000.00 8190
				38	ANDERSON	CHARLES	6/26/96	\$12,850.00 4515	\$17,365.00 3570
				41	ABNEY	ROBERT	8/9/96	\$0.00 400	\$400.00 40070
				46	DAVIS	ROBERT	8/9/96	\$400.00 600	\$1,000.00 15071

Shannon County

APPENDIX 11

CONDEMNATION WORKSHEET

14-Oct-96

ROUTE	COUNTY	PROJECT	C/A	TRACT	LAST NAME	FIRST NAME	DATE PAID	APPROVED APPRAISAL	COURT AWARD
69	19	K 3276-01	2250	1	PUCKETT	CALVIN	8/13/96	\$29,000.00 + 3500	\$32,500.00 x 12%
				2	PUCKETT	KEVIN	8/13/96	\$5,375.00 + 8905	\$14,820.00 x 166%
				3	BARONE	MICHAEL	8/13/96	\$400.00 600	\$1,000.00 + 50%
				4	PUCKETT	CALVIN	8/13/96	\$1,500.00 500	\$2,000.00 + 33%
				6	LONGO	AUGUST	8/13/96	\$10,375.00 12895	\$23,250.00 + 124%
				10	PERNOT	HERBERT	8/13/96	\$3,565.00 4823	\$8,388.00 + 135%
				20	WADE	THOMAS	8/13/96	\$5,210.00 3148	\$8,358.00 + 60%
				22	GALICHIA	ALLAN	8/13/96	\$1,615.00 10071	\$11,686.00 + 624%
				27	LLOYD	MERLE	8/13/96	\$3,480.00 12399	\$15,879.00 + 366%
				41	EVANS	JOHN	8/13/96	\$23,260.00 3890	\$27,160.00 + 17%
				116	DARNABY'S COUNTY HOUSE		8/13/96	\$125.00	\$150.00 + 20%

Crawford County

APPENDIX 12



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

TESTIMONY OF STEVE LEBEN*
on behalf of
THE KANSAS BAR ASSOCIATION
February 16, 1999

Regarding HB2140

The Kansas Bar Association opposes two portions of this bill, which we believe are unnecessary and counter-productive. The changes we oppose are:

1. The requirement that *all* of the three appointed appraisers "have experience in the valuation of real estate;" and
2. The prohibition *by statute* of *all* contact between the appraisers and either the condemning party or the property owner without the presence of the other party.

The Kansas Bar Association takes no position on the other provisions of HB2140.

In general, our position is that these aspects of current eminent domain practice aren't broken and don't need fixed. We also believe that these two changes have specific disadvantages over present practice. And, we believe that these amendments likely would lead to additional litigation as they are implemented. As one judge said with respect to these proposals, "Nearly seventeen years of judicial experience tells me that when statutory requirements are made, litigation *will* follow."

Qualifications of the Appraisers

To explain our opposition to this change, let me start with some background about the present statute and practice under it. The present statute, K.S.A. 26-504, requires appointment of three "disinterested householders" of the county. No substantive requirements are provided in the statute. Practice varies from judge to judge as to the qualifications of those appointed.

In Johnson County, most of the judges appoint two real estate appraisers and one

* Steve Leben is a district judge in Johnson County. His docket consists of civil and domestic cases. He is a member of the Kansas Bar Association's Board of Governors and a member of its Legislative Committee.

attorney. We feel that the inclusion of an attorney assures that appropriate procedures will be followed to make it a fair process. The appraisers are required to allow the presentation of testimony at a public hearing. K.S.A. 26-506. We have found that attorneys are usually best equipped to handle hearings such as those in a way that allows both actual fairness and a perception by the participants that it has been fairly conducted.

In a quick check of other district judges, in both urban and rural settings, most who responded had a practice of appointing at least one person who was not a full-time real estate appraiser.¹ That included both attorneys and non-attorneys, and occasionally included people who neither sold nor appraised real estate. One judge would sometimes include long-time rural property owners who, the judge believed, had a good knowledge of values in the area. Another judge often includes people without any real estate training. I made contact with ten other judges in the past week on this subject. None of the ten judges – urban or rural – had ever had a complaint about the types of persons appointed.²

Keep in mind that whenever the appraisal value determined by the three court-appointed appraisers is appealed, there is a right to have that appeal determined by a jury. Thus, the ultimate valuation of the property allowed in the condemnation process comes from a group of lay citizens, not solely from real estate appraisers or agents. Some judges feel that putting "regular folks" on the group of court-appointed appraisers results in getting the appraisers to respond to the same types of concerns and views a jury might express later. Others like the idea of having a lawyer in the mix, to insure procedural fairness. We believe that it is appropriate to continue these practices, which vary from place to place in our state, and that it is unnecessary to mandate that *all three* court-appointed appraisers have specific experience in the valuation of real estate.

¹ HB2140 also would amend the statute to provide that the judge "shall entertain suggestions from any interested party relating to the appointment of appraisers." We believe that most judges do so at present. In any event, the KBA does not oppose that amendment.

² Two of these ten judges favored the changes opposed here by the KBA. The others generally opposed both of the amendments discussed here. None of the judges noted any complaints about the qualifications of the appraisers they had appointed.

If this statutory change is adopted, we would expect litigation over application of the requirement of "experience in the valuation of real estate." How much experience would be enough? What types would qualify? Does a bank lending officer have that experience, even in the absence of any formal training in real estate appraisal? Does a long-time property owner in the area have that experience? What about an attorney who has tried condemnation cases? I do not believe that the answers to all of these questions are self-evident. When situations like that are confronted, and enough dollars are involved, litigation results.

*Ex Parte Contacts*³

The concern here is not about the concept. Everyone agrees that one side of the condemnation case should not have substantive discussions about value with the appraisers outside of the presence of the other party. Present law requires judges to give written instructions to the appraisers. K.S.A. 26-505. Instructions are ordinarily given that the appraisers should not allow ex parte contacts. The Pattern Instructions for Kansas specifically include such an instruction. PIK 3rd 131.17 provides, in part: "In the discharge of your duties, you should avoid any meetings or discussions with representatives of the condemnor or the property owner without affording both parties an opportunity to be present."

It is one thing, however, to instruct the appraisers to *avoid* such meetings and quite another to legislatively *prohibit* them altogether, as HB2140 would do. The appraisal process is intended to be an easy process to carry out within an expedited time frame. Situations arise in which one of the three appraisers may need to re-visit the property, or in which one of the three is unavailable at the time the original property viewing is set (due to illness or otherwise). We see no reason that the supplemental site visit needs all parties in attendance, so long as no substantive discussion of value are allowed to occur. Likewise, if the appraisers need a more legible copy of an engineering drawing or map, there seems to be no reason to require a conference call or joint meeting, when a single call to the condemnor's attorney can result in the proper document being

³ For anyone unfamiliar with this term, ex parte contacts are ones made with the decision maker by only one side, outside the presence of the other side. Such contacts are usually prohibited when they deal with the substance of the dispute at issue.

sent out to all.³ We also believe that appointed appraisers generally do follow the instruction they are presently given, *i.e.*, to avoid such improper, substantive communications.

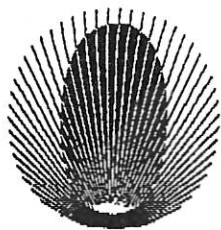
This is another area in which litigation would undoubtedly follow. If some prohibited contact occurs, must new appraisers be appointed and the process started over? If so, could the landowner continually make ex parte contact with the appraisers, in an attempt to stall or thwart the condemnation proceeding? Would any evidence be needed before a hearing would be required to investigate whether ex parte contacts had occurred, or would a hearing be required any time a landowner or condemning authority suspected that ex parte contacts had occurred? If the party does not learn about the ex parte contact until after the appraisal report has been filed, is there a time limit on motions to set aside the appraisal based upon the statutorily prohibited ex parte contact? Once again, I would suggest that the answers to these questions are not self-evident, and that litigation would result whenever justified by the dollars involved.

CONCLUSION

Neither of the proposed amendments discussed here is needed. Judges throughout the state are appointing appropriate persons as appraisers. Some who do not have real estate valuation experience per se, including attorneys, can play useful roles as court-appointed appraisers – attorneys, in insuring fair procedures, and lay citizens, in simulating the ultimate views a jury might have as to value. Ex parte contacts are already to be "avoided" under written instructions judges generally provide to the appraisers. Flatly prohibiting such conduct by statute is unnecessary. With respect to both amendments, additional litigation beyond what presently occurs in condemnation cases can be expected. For these reasons, the Kansas Bar Association recommends against adoption of the proposed amendments outlined here. As always, we greatly appreciate your consideration of our views.

###

³ Since HB2140 prohibits contact "with representatives" of the parties, the phone call described above would be prohibited unless made by conference call to both sides.



City of Olathe

TO: The Honorable Mike O'Neal, Chairperson
Members of the House Committee on Judiciary, Room 313-S

RE: House Bill No. 2140 – Proposed Amendments to the Eminent Domain Act

The City of Olathe wants to restate its position that it is not necessary to amend the Eminent Domain Act. The definition of fair market value we believe is appropriate is the one currently set out in Sec. 131.17 of the Pattern Instructions for Kansas (PIK instructions). This definition is given to court-appointed appraisers and juries in determining value of the taking.

The City still opposes the proposed definition that the fair market value shall be determined by the use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such method **without providing for a preference that comparable sales appraisal shall be used unless it cannot be applied to the tract involved in the taking.** Based upon the City's experience in past eminent domain actions, the income approach used by several landowners tends to be speculative at the date of taking, since no one can anticipate the effect of the taking on the income until after the completion of the improvement project.

The Chairperson asked for language for the Judiciary Committee to consider for the final draft of the bill. The City offers two alternate definitions for fair market value:

1. The first proposed definition sets out a preference for the use of comparable sales, while using the fair market value provided in the PIK instructions:

“Fair market value: ‘Fair market value’ means the amount in terms of money which would be paid under normal circumstances on the free and open market, in the usual course of dealings, by a willing buyer not forced to buy and which amount would be acceptable to a willing seller not forced to sell. The fair market value shall be determined by the use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such methods, provided that preference shall be given to the use of comparable sales appraisal if it is applicable to the tract involved in the taking.”

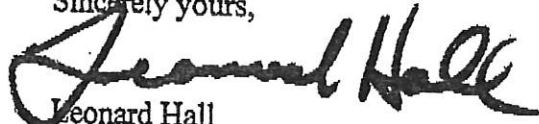
2. The second proposed definition follows the original proposed definition, but a provision is added requiring that actual data, which may include the use of the county appraised value, shall be used and not be speculative nor conjecture.

Page Two

"Fair market value: 'Fair market value' means the amount in terms of money which would be paid under normal circumstances on the free and open market, in the usual course of dealings, by a willing buyer not forced to buy and which amount would be acceptable to a willing seller not forced to sell. The fair market value shall be determined by the use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such methods, provided that actual data, including the applicable use of the county appraised valuation, shall be used, and shall not be speculative nor conjectural."

The reason for inserting the applicable use of the county appraised value is that at the end of the Judiciary Committee hearing, another person spoke in favor of using the method used for taxation purposes. Pursuant to current state law, each tract, except for agricultural properties, is assigned a fair market value by the county.

Sincerely yours,



Leonard Hall
Assistant City Attorney

PIK

131.17

PATTERN INSTRUCTIONS KANSAS 3d

testimony of the condemnor, landowner, lienholders of record, and any party(ies) in possession.

Notice of the hearing shall be mailed at least ten (10) days in advance of the hearing to the condemnor and to each party named in the condemnation petition filed with the court if his or her address is known or can with reasonable diligence be located. Also, notice shall also be given by one publication in a newspaper of general circulation in each county where the subject lands are located at least ten (10) days before the hearing. If you do not meet on the day designated in the notice, you may meet on the following day without further notice, but otherwise a new notice shall be required with the same time considerations as required in the original notices.

Your written notice to parties and for publication should be substantially in compliance with the form given in K.S.A. 26-506.

Market Value

* The word "value" as used in these instructions means "market value." Market value is that amount which would be paid under normal circumstances on the free and open market, in the usual course of dealings, by a willing buyer not forced to buy and which amount would be acceptable to a willing seller not forced to sell. In determining market value you are to consider all of the possibilities for the use of the land and interest taken, including the best and most advantageous use to which the property is reasonably adaptable, but this best and most advantageous use must not be speculative, conjectural, or remote. The uses which may be considered must be so reasonably probable as to have an effect on the market value of the land at the time of the taking. Unless the court instructs you to the contrary, the time of taking means at the time you file your award.

In determining market value, you are to consider the nature of the interest condemned as described in the condemnor's petition. Fair market value must be determined based upon the rights acquired under that described taking and not by any representations as to a limited use of those rights.



To: House Judiciary Committee
From: Kim Gulley, Assistant General Counsel
Date: February 16, 1999
Re: Opposition to HB 2140

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our 529 member cities. We appear today in opposition to House Bill 2140.

Section 2 would prohibit communications among the parties and their representatives during eminent domain proceedings. Practically, this provision could prove to be unworkable. Very often a representative of the city (e.g., the city attorney) will serve as a coordinator to set up meeting times and inspections. This section would make the coordination by the city very difficult because a single landowner could delay the proceedings simply by making scheduling demands.

It is also important to remember that this section also restricts individual landowners from having any discussions with representatives of the city unless all other landowners are notified and have an opportunity to be present. Most cities actually encourage property owners who have questions or concerns during eminent domain proceedings to feel free to contact the city representative to pose their questions. This section would prohibit the landowner from making a simple phone call with a simple question. This seems counterproductive to the intent of having fully informed landowners.

The prohibition against ex parte communications would prove particularly onerous when the eminent domain proceedings involve a large number of landowners. It would serve to delay the process and, therefore, increase the total cost of the project to the city and, in turn, the local taxpayer.

The League is also concerned with the addition of the requirement in Section 3 that the appraisers use the "fair market value" standard when valuing the property. We believe the current list of factors set out in the statute is appropriate and the public interest is best served by leaving the ultimate determination to the appraisers and the judge. Further, this change would require the same standard to apply regardless of the type of property being taken in an eminent domain proceeding. Under the current law, appraisers are allowed to use their best judgment based upon the current and future uses of the land. For example, condemnations for utility easements are valued differently than large tracks of land to be used for an industrial park. We think that this discretion should be maintained and we would, therefore, oppose this change as well.

Once again, thank you for allowing me to present our concerns with House Bill 2140. We appreciate your consideration.

A SECTION BY SECTION ANALYSIS
& COMMENTARY

Session of 1999

HOUSE BILL No. 2276

By Committee on Judiciary

2-4

9 AN ACT enacting the Kansas revised limited liability company act; re-
10 pealing K.S.A. 17-7601, 17-7602, 17-7603, 17-7606, 17-7609, 17-7610,
11 17-7611, 17-7612, 17-7613, 17-7614, 17-7615, 17-7617, 17-7618, 17-
12 7619, 17-7620, 17-7621, 17-7623, 17-7624, 17-7625, 17-7626, 17-7627,
13 17-7628, 17-7629, 17-7630, 17-7631, 17-7632, 17-7633, 17-7635, 17-
14 7636, 17-7637, 17-7638, 17-7639, 17-7640, 17-7641, 17-7642, 17-7643,
15 17-7644, 17-7645, 17-7646, 17-7649, 17-7650, 17-7652, 17-7653, 17-
16 7655 and 17-7656 and K.S.A. 1998 Supp. 17-7604, 17-7605, 17-7607,
17 17-7608, 17-7616, 17-7622, 17-7634, 17-7647, 17-7648 and 17-7654.

18
19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. This act shall be known and may be cited as the Kansas
21 revised limited liability company act.

22 Sec. 2. As used in this act unless the context otherwise requires:

23 (a) "Articles of organization" means the articles of organization re-
24 ferred to in section 12, and amendments thereto, and the articles as
25 amended.

26 (b) "Bankruptcy" means an event that causes a person to cease to be
27 a member as provided in section 28, and amendments thereto.

28 (c) "Contribution" means any cash, property, services rendered or a
29 promissory note or other obligation to contribute cash or property or to
perform services, which a person contributes to a limited liability com-
pany in such person's capacity as a member.

30 (d) "Foreign limited liability company" means a limited liability com-
31 pany formed under the laws of any state or under the laws of any foreign
32 country or other foreign jurisdiction and denominated as such under the
33 laws of such state or foreign country or other foreign jurisdiction.

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

36 (f) "Limited liability company" and "domestic limited liability com-
37 pany" means a limited liability company formed under the laws of the
38 state of Kansas and having one or more members.

39 (g) "Operating agreement" means any agreement, written or oral, of
40 the member or members as to the affairs of a limited liability company
41 and the conduct of its business. A written operating agreement or another
42
43

KBA ANALYSIS is in this column. References to Delaware Code article 18 (De-
XXXX) refers to the Delaware Limited Liability Company Code.

Harvey Sorensen of Foulston-Siefken in Wichita was the principle author of the
commentary to this act, although the other attorneys listed below had a hand in
craft the comments. This was a two-year project by this group of KBA lawyers:

Stan Andecl, Mischa Buford, William Fleming, Terry Fry, James MacBeth,
Eric Namee, Austin Nothern, Tim O'Sullivan, William Prugh, Nancy Roush,
Melissa Wangemann and William Wood.

Sec 1. Comments: Revised existing K.S.A. 17-7601.

*Sec. 2 Comments. This provision replaces K.S.A. 17-7602. Delaware
includes several definitions that could be termed 'substantive' in nature in this
section.*

*A definition for "majority in interest" in this section has been added and
intend to remove it from Section 20(a). The language follows the text in Delaware
Section 18-209(b). Neither Kansas nor Delaware have been consistent in the
terminology used.*

*Some conforming changes to the Delaware terminology have been made to
adopt the Kansas style (e.g. the Delaware "limited liability company agreement" has
been changed to "operating agreement").*

House Judiciary
2-16-99
Attachment 5

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

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

(B) without such execution, if such person (or a representative au-
 11 thorized by such person orally, in writing or by other action such as pay-
 12 ment for a limited liability company interest) complies with the conditions
 13 for becoming a member or assignee as set forth in the operating agree-
 14 ment or any other writing and requests (orally, in writing or by other
 15 action such as payment for a limited liability company interest) that the
 16 records of the limited liability company reflect such admission or assign-
 17 ment; and
 18

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

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

26 (i) "Liquidating trustee" means a person carrying out the winding up
 27 of a limited liability company.

28 (j) "Majority in interest" means the affirmative vote or consent of the
 29 members who own more than 50% of the then current percentage or
 30 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 lim-
 31 ited liability company in, or designated as a manager of, a limited liability
 32 company pursuant to an operating agreement or similar instrument under
 33 which the limited liability company is formed.

34 (l) "Member" means a person who has been admitted to a limited
 35 liability company as a member as provided in section 25, and amendments
 36 thereto, or, in the case of a foreign limited liability company, in accord-
 37 ance with the laws of the state or foreign country or other foreign juris-
 38 diction under which the foreign limited liability company is organized.

39 (m) "Person" means a natural person, partnership (whether general
 40 or limited and whether domestic or foreign), limited liability company,
 41

1 foreign limited liability company, trust, estate, association, corporation,
2 custodian, nominee or any other individual or entity in its own or any
3 representative capacity.

4 (n) "Personal representative" means, as to a natural person, the ex-
5 ecutor, administrator, guardian, conservator or other legal representative
6 thereof and, as to a person other than a natural person, the legal repre-
7 sentative or successor thereof.

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

11 Sec. 3. The name of each limited liability company as set forth in its
articles of organization:

12 (a) Shall contain the words "limited liability company" or "limited
13 company", or the abbreviation "LLC," "LC" or the designation "LLC"
14 or "LC";

15 (b) may contain the name of a member or manager;

16 (c) Must be such as to distinguish it upon the records with the sec-
17 retary of state from the name of any corporation, limited partnership,
18 business trust, registered limited liability partnership or limited liability
19 company reserved, registered, formed or organized under the laws of the
20 state of Kansas or qualified to do business or registered as a foreign cor-
21 poration, foreign limited partnership or foreign limited liability company
22 in the state of Kansas; provided however, that a limited liability company
23 may register under any name which is not such as to distinguish it upon
24 the records with the secretary of state from the name of any domestic or
25 foreign corporation, limited partnership, business trust, registered limited
26 liability partnership or limited liability company reserved, registered,
27 formed or organized under the laws of the state of Kansas with the written
28 consent of the other corporation, limited partnership, business trust, reg-
29 istered limited liability partnership or limited liability company, which
30 written consent shall be filed with the secretary of state; and

31 (d) May contain the following words: "company," "association,"
"club," "foundation," "fund," "institute," "society," "union," "syndicate,"
"limited" or "trust" (or abbreviations of like import).

32 Sec. 4. The exclusive right to the use of a name may be reserved in
33 the same manner as corporation names are reserved as set forth in K.S.A.
34 17-7402, and amendments thereto. A fee of \$20 shall be paid at the time
35 of the reservation of any name.

36 Sec. 5. (a) Each limited liability company shall have and maintain in
37 the state of Kansas:

38 (1) A registered office, which may but need not be a place of its
39 business in the state of Kansas; and

40 (2) A resident agent for service of process on the limited liability
41
42
43

Sec. 3 Comments: This section compares to K.S.A. 17-7606. The statutes are the same except Kansas permits the use of Limited Company or its abbreviations in the name.

It is our understanding the Board of Accountancy may ask for an amendment to require professionals to list somehow that they are professionals in the designation, e.g. PLLC.

Sec. 4 Comments: This section now appears as K.S.A. 17-7633 and has been moved to conform to the Delaware numbering system. The Kansas section has been retained and replaces Delaware 18-103.

Section 5 on next page:

1 company, which agent may be either an individual resident of the state
 2 of Kansas whose business office is identical with the limited liability com-
 3 pany's registered office, or a domestic corporation, or a domestic limited
 4 partnership, or a domestic limited liability company, or a domestic busi-
 5 ness trust or a foreign corporation, or a foreign limited partnership, or a
 6 foreign limited liability company authorized to do business in the state of
 7 Kansas having a business office identical with such registered office,
 8 which is generally open during normal business hours to accept service
 9 of process and otherwise perform the functions of a resident agent, or
 10 the limited liability company itself.

(b) A resident agent may change the address of the registered office
 of the limited liability company or companies for which such resident
 agent is resident agent to another address in the state of Kansas by paying
 a fee as set forth in section 75, and amendments thereto, and filing with
 the secretary of state a certificate, executed by such resident agent, setting
 forth the names of all the limited liability companies represented by such
 resident agent, and the address at which such resident agent has main-
 tained the registered office for each of such limited liability companies,
 and further certifying to the new address to which each such registered
 office will be changed on a given day, and at which new address such
 resident agent will thereafter maintain the registered office for each of
 the limited liability companies recited in the certificate. Upon the filing
 of such certificate, the secretary of state shall furnish to the resident agent
 a certified copy of the same under the secretary's hand and seal of office,
 and thereafter, or until further change of address, as authorized by law,
 the registered office in the state of Kansas of each of the limited liability
 companies recited in the certificate shall be located at the new address
 of the resident agent thereof as given in the certificate. In the event of a
 change of name of any person acting as a resident agent of a limited
 liability company, such resident agent shall file with the secretary of state
 a certificate, executed by such resident agent, setting forth the new name
 of such resident agent, the name of such resident agent before it was
 changed, the names of all the limited liability companies represented by
 such resident agent, and the address at which such resident agent has
 maintained the registered office for each of such limited liability com-
 panies, and shall pay a fee as set forth in section 75, and amendments
 thereto. Upon the filing of such certificate, the secretary of state shall
 furnish to the resident agent a certified copy of the certificate under hand
 and seal of office. Filing a certificate under this section shall be deemed
 to be an amendment of the articles of organization of each limited liability
 company affected thereby and each such limited liability company shall
 not be required to take any further action with respect thereto, to amend
 its articles of organization under section 75, and amendments thereto.

Sec. 5 Comments: K.S.A. 17-7611(e) was added to the above Delaware section to conform with present Kansas law. It is believed to be a beneficial provision.

1 Any resident agent filing a certificate under this section shall promptly,
2 upon such filing, deliver a copy of any such certificate to each limited
3 liability company affected thereby.

4 (c) The resident agent of one or more limited liability companies may
5 resign and appoint a successor resident agent by paying a fee as set forth
6 in section 75, and amendments thereto, and filing a certificate with the
7 secretary of state, stating that the resident agent resigns and the name
8 and address of the successor resident agent. There shall be attached to
9 such certificate a statement executed by each affected limited liability
10 company ratifying and approving such change of resident agent. Upon
11 such filing, the successor resident agent shall become the resident agent
of such limited liability companies as have ratified and approved such
substitution and the successor resident agent's address, as stated in such
certificate, shall become the address of each such limited liability com-
15 pany's registered office in the state of Kansas. The secretary of state shall
16 furnish to the successor resident agent a certified copy of the certificate
17 of resignation. Filing of such certificate of resignation shall be deemed to
18 be an amendment of the articles of organization of each limited liability
19 company affected thereby and each such limited liability company shall
20 not be required to take any further action with respect thereto, to amend
21 its articles of organization under section 75, and amendments thereto.

22 (d) The resident agent of a limited liability company may resign with-
23 out appointing a successor resident agent by paying a fee as set forth in
24 section 75, and amendments thereto, and filing a certificate with the sec-
25 retary of state stating that the resident agent resigns as resident agent for
26 the limited liability company identified in the certificate, but such resig-
27 nation shall not become effective until 60 days after the certificate is filed.
28 There shall be attached to said certificate an affidavit of such resident
29 agent, if an individual, or the president, a vice-president or the secretary
30 thereof if a corporation, that at least 30 days prior to and on or about the
31 date of the filing of such certificate, notices were sent by certified or
registered mail to the limited liability company for which such resident
agent is resigning as resident agent, at the principal office thereof within
or outside the state of Kansas, if known to such resident agent or, if not,
35 to the last known address of the attorney or other individual at whose
36 request such resident agent was appointed for such limited liability com-
37 pany, of the resignation of such resident agent. After receipt of the notice
38 of the resignation of its resident agent, the limited liability company for
39 which such resident agent was acting shall obtain and designate a new
40 resident agent, to take the place of the resident agent so resigning. If such
41 limited liability company fails to obtain and designate a new resident agent
42 as aforesaid prior to the expiration of the period of 60 days after the filing
43 by the resident agent of the certificate of resignation, the articles of or-

A SECTION BY SECTION ANALYSIS
& COMMENTARY

Session of 1999

HOUSE BILL No. 2276

By Committee on Judiciary

2-4

9 AN ACT enacting the Kansas revised limited liability company act; re-
10 pealing K.S.A. 17-7601, 17-7602, 17-7603, 17-7606, 17-7609, 17-7610,
11 17-7611, 17-7612, 17-7613, 17-7614, 17-7615, 17-7617, 17-7618, 17-
12 7619, 17-7620, 17-7621, 17-7623, 17-7624, 17-7625, 17-7626, 17-7627,
13 17-7628, 17-7629, 17-7630, 17-7631, 17-7632, 17-7633, 17-7635, 17-
14 7636, 17-7637, 17-7638, 17-7639, 17-7640, 17-7641, 17-7642, 17-7643,
15 17-7644, 17-7645, 17-7646, 17-7649, 17-7650, 17-7652, 17-7653, 17-
16 7655 and 17-7656 and K.S.A. 1998 Supp. 17-7604, 17-7605, 17-7607,
17 17-7608, 17-7616, 17-7622, 17-7634, 17-7647, 17-7648 and 17-7654.

18
19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. This act shall be known and may be cited as the Kansas
21 revised limited liability company act.

22 Sec. 2. As used in this act unless the context otherwise requires:

23 (a) "Articles of organization" means the articles of organization re-
24 ferred to in section 12, and amendments thereto, and the articles as
25 amended.

26 (b) "Bankruptcy" means an event that causes a person to cease to be
27 a member as provided in section 28, and amendments thereto.

28 (c) "Contribution" means any cash, property, services rendered or a
29 promissory note or other obligation to contribute cash or property or to
perform services, which a person contributes to a limited liability com-
pany in such person's capacity as a member.

30 (d) "Foreign limited liability company" means a limited liability com-
31 pany formed under the laws of any state or under the laws of any foreign
32 country or other foreign jurisdiction and denominated as such under the
33 laws of such state or foreign country or other foreign jurisdiction.

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

36 (f) "Limited liability company" and "domestic limited liability com-
37 pany" means a limited liability company formed under the laws of the
38 state of Kansas and having one or more members.

39 (g) "Operating agreement" means any agreement, written or oral, of
40 the member or members as to the affairs of a limited liability company
41 and the conduct of its business. A written operating agreement or another
42
43

KBA ANALYSIS is in this column. References to Delaware Code article 18 (De-
XXXX) refers to the Delaware Limited Liability Company Code.

Harvey Sorensen of Foulston-Siefken in Wichita was the principle author of the
commentary to this act, although the other attorneys listed below had a hand in
craft the comments. This was a two-year project by this group of KBA lawyers:

Stan Andecl, Mischa Buford, William Fleming, Terry Fry, James MacBeth,
Eric Namee, Austin Nothern, Tim O'Sullivan, William Prugh, Nancy Roush,
Melissa Wangemann and William Wood.

Sec 1. Comments: Revised existing K.S.A. 17-7601.

*Sec. 2 Comments. This provision replaces K.S.A. 17-7602. Delaware
includes several definitions that could be termed 'substantive' in nature in this
section.*

*A definition for "majority in interest" in this section has been added and
intend to remove it from Section 20(a). The language follows the text in Delaware
Section 18-209(b). Neither Kansas nor Delaware have been consistent in the
terminology used.*

*Some conforming changes to the Delaware terminology have been made to
adopt the Kansas style (e.g. the Delaware "limited liability company agreement" has
been changed to "operating agreement").*

House Judiciary
2-16-99
Attachment 5

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

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

(B) without such execution, if such person (or a representative au-
 11 thorized by such person orally, in writing or by other action such as pay-
 12 ment for a limited liability company interest) complies with the conditions
 13 for becoming a member or assignee as set forth in the operating agree-
 14 ment or any other writing and requests (orally, in writing or by other
 15 action such as payment for a limited liability company interest) that the
 16 records of the limited liability company reflect such admission or assign-
 17 ment; and
 18

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

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

26 (i) "Liquidating trustee" means a person carrying out the winding up
 27 of a limited liability company.

28 (j) "Majority in interest" means the affirmative vote or consent of the
 29 members who own more than 50% of the then current percentage or
 30 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 lim-
 31 ited liability company in, or designated as a manager of, a limited liability
 32 company pursuant to an operating agreement or similar instrument under
 33 which the limited liability company is formed.

34 (l) "Member" means a person who has been admitted to a limited
 35 liability company as a member as provided in section 25, and amendments
 36 thereto, or, in the case of a foreign limited liability company, in accord-
 37 ance with the laws of the state or foreign country or other foreign juris-
 38 diction under which the foreign limited liability company is organized.

39 (m) "Person" means a natural person, partnership (whether general
 40 or limited and whether domestic or foreign), limited liability company,
 41

1 foreign limited liability company, trust, estate, association, corporation,
2 custodian, nominee or any other individual or entity in its own or any
3 representative capacity.

4 (n) "Personal representative" means, as to a natural person, the ex-
5 ecutor, administrator, guardian, conservator or other legal representative
6 thereof and, as to a person other than a natural person, the legal repre-
7 sentative or successor thereof.

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

11 Sec. 3. The name of each limited liability company as set forth in its
articles of organization:

12 (a) Shall contain the words "limited liability company" or "limited
13 company", or the abbreviation "LLC," "LC" or the designation "LLC"
14 or "LC";

15 (b) may contain the name of a member or manager;

16 (c) Must be such as to distinguish it upon the records with the sec-
17 retary of state from the name of any corporation, limited partnership,
18 business trust, registered limited liability partnership or limited liability
19 company reserved, registered, formed or organized under the laws of the
20 state of Kansas or qualified to do business or registered as a foreign cor-
21 poration, foreign limited partnership or foreign limited liability company
22 in the state of Kansas; provided however, that a limited liability company
23 may register under any name which is not such as to distinguish it upon
24 the records with the secretary of state from the name of any domestic or
25 foreign corporation, limited partnership, business trust, registered limited
26 liability partnership or limited liability company reserved, registered,
27 formed or organized under the laws of the state of Kansas with the written
28 consent of the other corporation, limited partnership, business trust, reg-
29 istered limited liability partnership or limited liability company, which
30 written consent shall be filed with the secretary of state; and

31 (d) May contain the following words: "company," "association,"
"club," "foundation," "fund," "institute," "society," "union," "syndicate,"
"limited" or "trust" (or abbreviations of like import).

32 Sec. 4. The exclusive right to the use of a name may be reserved in
33 the same manner as corporation names are reserved as set forth in K.S.A.
34 17-7402, and amendments thereto. A fee of \$20 shall be paid at the time
35 of the reservation of any name.

36 Sec. 5. (a) Each limited liability company shall have and maintain in
37 the state of Kansas:

38 (1) A registered office, which may but need not be a place of its
39 business in the state of Kansas; and

40 (2) A resident agent for service of process on the limited liability
41
42
43

Sec. 3 Comments: This section compares to K.S.A. 17-7606. The statutes are the same except Kansas permits the use of Limited Company or its abbreviations in the name.

It is our understanding the Board of Accountancy may ask for an amendment to require professionals to list somehow that they are professionals in the designation, e.g. PLLC.

Sec. 4 Comments: This section now appears as K.S.A. 17-7633 and has been moved to conform to the Delaware numbering system. The Kansas section has been retained and replaces Delaware 18-103.

Section 5 on next page:

1 Any resident agent filing a certificate under this section shall promptly,
2 upon such filing, deliver a copy of any such certificate to each limited
3 liability company affected thereby.

4 (c) The resident agent of one or more limited liability companies may
5 resign and appoint a successor resident agent by paying a fee as set forth
6 in section 75, and amendments thereto, and filing a certificate with the
7 secretary of state, stating that the resident agent resigns and the name
8 and address of the successor resident agent. There shall be attached to
9 such certificate a statement executed by each affected limited liability
10 company ratifying and approving such change of resident agent. Upon
11 such filing, the successor resident agent shall become the resident agent
of such limited liability companies as have ratified and approved such
substitution and the successor resident agent's address, as stated in such
certificate, shall become the address of each such limited liability com-
15 pany's registered office in the state of Kansas. The secretary of state shall
16 furnish to the successor resident agent a certified copy of the certificate
17 of resignation. Filing of such certificate of resignation shall be deemed to
18 be an amendment of the articles of organization of each limited liability
19 company affected thereby and each such limited liability company shall
20 not be required to take any further action with respect thereto, to amend
21 its articles of organization under section 75, and amendments thereto.

22 (d) The resident agent of a limited liability company may resign with-
23 out appointing a successor resident agent by paying a fee as set forth in
24 section 75, and amendments thereto, and filing a certificate with the sec-
25 retary of state stating that the resident agent resigns as resident agent for
26 the limited liability company identified in the certificate, but such resig-
27 nation shall not become effective until 60 days after the certificate is filed.
28 There shall be attached to said certificate an affidavit of such resident
29 agent, if an individual, or the president, a vice-president or the secretary
30 thereof if a corporation, that at least 30 days prior to and on or about the
31 date of the filing of such certificate, notices were sent by certified or
registered mail to the limited liability company for which such resident
agent is resigning as resident agent, at the principal office thereof within
or outside the state of Kansas, if known to such resident agent or, if not,
35 to the last known address of the attorney or other individual at whose
36 request such resident agent was appointed for such limited liability com-
37 pany, of the resignation of such resident agent. After receipt of the notice
38 of the resignation of its resident agent, the limited liability company for
39 which such resident agent was acting shall obtain and designate a new
40 resident agent, to take the place of the resident agent so resigning. If such
41 limited liability company fails to obtain and designate a new resident agent
42 as aforesaid prior to the expiration of the period of 60 days after the filing
43 by the resident agent of the certificate of resignation, the articles of or-

1 ganization of such limited liability company shall be deemed to be canceled. After the resignation of the resident agent shall have become effective as provided in this section and if no new resident agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the resigned resident agent had been acting shall thereafter be upon the secretary of state in accordance with section 75, and amendments thereto.

8 (e) If a domestic limited liability company's resident agent dies or moves from the registered office, the limited liability company shall designate and certify to the secretary of state the name of another resident agent within 30 days of the death or move. If no new resident agent is designated, the service of legal process on the limited liability company may be made as prescribed in K.S.A. 60-304, and amendments thereto. If any domestic limited liability company fails to designate a new resident agent as required by this subsection, the secretary of state, after giving 30 days' notice of the intended action, may declare the articles of organization canceled.

18 Sec. 6. (a) Process against a limited liability company may be served:

19 (1) In accordance with K.S.A. 60-304 and 60-306, and amendments thereto, as if the company were a partnership; or

21 (2) upon the resident agent at the business address of the resident agent.

23 (b) Any notice to or demand on a company organized pursuant to this act may be made:

25 (1) By delivery to a manager of the company, if the management is vested in a manager, or delivery to any member, if the management is vested in the members; or

28 (2) by writing, which notice or demand in writing shall be mailed to the registered office of the company in this state or to another address in this state which is the principal office of the company.

30 (c) Nothing contained in this section shall limit or affect the right to serve, in any other manner now or hereafter permitted by law, any process, notice or demand required or permitted by law to be served upon a limited liability company.

35 Sec. 7. (a) Unless otherwise specifically prohibited by law, a limited liability company may carry on any lawful business, purpose or activity, whether or not for profit with the exception of the business of granting policies of insurance, or assuming insurance risks or banking as defined in K.S.A. 9-702, and amendments thereto.

40 (b) A limited liability company shall possess and may exercise all the powers and privileges granted by this act or by any other law or by its operating agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct,

Sec. 6 Comments: K.S.A. 17-7632 has been retained in lieu of Delaware 18-105 in order to conform to present Kansas law, retain the cross-reference to the Kansas Code of Civil Procedure (K.S.A. 60-304 et seq.). Certain provisions in the Delaware code are not compatible with Kansas law.

Sec. 7 Comments: The Delaware statute does not enumerate specific powers of the LLC while the Kansas statute (K.S.A. 17-7604) does. The Delaware version has been recommended as the enumeration of specific powers is not necessary and may be interpreted as exclusive. The language in Section 7 includes language added to the Kansas LLC Act in 1998. (HB 2126)

1 promotion or attainment of the business, purposes or activities of the
 2 limited liability company.

3 (c) A limited liability company organized and existing under the Kan-
 4 sas limited liability company act or otherwise qualified to do business in
 5 Kansas may have and exercise all powers which may be exercised by a
 6 Kansas professional association or professional corporation under the pro-
 7 fessional corporation law of Kansas, including employment of profession-
 8 als to practice a profession, which shall be limited to the practice of one
 9 profession, except as provided in K.S.A. 17-2710, and amendments
 10 thereto.

11 (d) Only a qualified person may be a member of a limited liability
 company organized to exercise powers of a professional association or
 professional corporation. No membership may be transferred to another
 person until there is presented to such limited liability company a certif-
 13 icate by the licensing body, as defined in K.S.A. 1998 Supp. 74-146, and
 14 amendments thereto, stating that the person to whom the transfer is made
 15 or the membership issued is duly licensed to render the same type of
 16 professional services as that for which the limited liability company was
 17 organized.

18 (e) As used in the section, "qualified person" means:

19 (1) Any natural person licensed to practice the same type of profession
 20 which any professional corporation is authorized to practice;

21 (2) the trustee of a trust which is a qualified trust under subsection
 22 (a) of section 401 of the federal internal revenue code of 1986, as in effect,
 23 on July 1, 1999, or of a contribution plan which is a qualified employee
 24 stock ownership plan under subsection (a) of section 409A of the federal
 25 internal revenue code of 1986, as in effect, on July 1, 1999;

26 (3) the trustee of a revocable living trust established by a natural
 27 person who is licensed to practice the type of profession which any pro-
 28 fessional corporation is authorized to practice, if the terms of such trust
 29 provide that such natural person is the principal beneficiary and sole
 30 trustee of such trust and such trust does not continue to hold title to
 31 membership in the limited liability company following such natural per-
 son's death for more than a reasonable period of time necessary to dispose
 of such membership; or

32 (4) a Kansas professional corporation or foreign professional corpo-
 33 ration in which at least one member or shareholder is authorized by a
 34 licensing body, as defined in K.S.A. 1998 Supp. 74-146, and amendments
 35 thereto, to render in this state a professional service permitted by the
 36 articles of organization; or

37 (5) a general partnership or limited liability company, if all partners
 38 or members thereof are authorized to render the professional services
 39 permitted by the articles of organization of the issuing limited liability
 40 company.

41
 42
 43

1 ganization of such limited liability company shall be deemed to be canceled. After the resignation of the resident agent shall have become effective as provided in this section and if no new resident agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the resigned resident agent had been acting shall thereafter be upon the secretary of state in accordance with section 75, and amendments thereto.

8 (e) If a domestic limited liability company's resident agent dies or moves from the registered office, the limited liability company shall designate and certify to the secretary of state the name of another resident agent within 30 days of the death or move. If no new resident agent is designated, the service of legal process on the limited liability company may be made as prescribed in K.S.A. 60-304, and amendments thereto. If any domestic limited liability company fails to designate a new resident agent as required by this subsection, the secretary of state, after giving 30 days' notice of the intended action, may declare the articles of organization canceled.

18 Sec. 6. (a) Process against a limited liability company may be served:

19 (1) In accordance with K.S.A. 60-304 and 60-306, and amendments thereto, as if the company were a partnership; or

21 (2) upon the resident agent at the business address of the resident agent.

23 (b) Any notice to or demand on a company organized pursuant to this act may be made:

25 (1) By delivery to a manager of the company, if the management is vested in a manager, or delivery to any member, if the management is vested in the members; or

28 (2) by writing, which notice or demand in writing shall be mailed to the registered office of the company in this state or to another address in this state which is the principal office of the company.

30 (c) Nothing contained in this section shall limit or affect the right to serve, in any other manner now or hereafter permitted by law, any process, notice or demand required or permitted by law to be served upon a limited liability company.

35 Sec. 7. (a) Unless otherwise specifically prohibited by law, a limited liability company may carry on any lawful business, purpose or activity, whether or not for profit with the exception of the business of granting policies of insurance, or assuming insurance risks or banking as defined in K.S.A. 9-702, and amendments thereto.

40 (b) A limited liability company shall possess and may exercise all the powers and privileges granted by this act or by any other law or by its operating agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct,

Sec. 6 Comments: K.S.A. 17-7632 has been retained in lieu of Delaware 18-105 in order to conform to present Kansas law, retain the cross-reference to the Kansas Code of Civil Procedure (K.S.A. 60-304 et seq.). Certain provisions in the Delaware code are not compatible with Kansas law.

Sec. 7 Comments: The Delaware statute does not enumerate specific powers of the LLC while the Kansas statute (K.S.A. 17-7604) does. The Delaware version has been recommended as the enumeration of specific powers is not necessary and may be interpreted as exclusive. The language in Section 7 includes language added to the Kansas LLC Act in 1998. (HB 2126)

1 promotion or attainment of the business, purposes or activities of the
2 limited liability company.

3 (c) A limited liability company organized and existing under the Kan-
4 sas limited liability company act or otherwise qualified to do business in
5 Kansas may have and exercise all powers which may be exercised by a
6 Kansas professional association or professional corporation under the pro-
7 fessional corporation law of Kansas, including employment of profession-
8 als to practice a profession, which shall be limited to the practice of one
9 profession, except as provided in K.S.A. 17-2710, and amendments
10 thereto.

11 (d) Only a qualified person may be a member of a limited liability
company organized to exercise powers of a professional association or
professional corporation. No membership may be transferred to another
person until there is presented to such limited liability company a certif-
15 icate by the licensing body, as defined in K.S.A. 1998 Supp. 74-146, and
16 amendments thereto, stating that the person to whom the transfer is made
17 or the membership issued is duly licensed to render the same type of
18 professional services as that for which the limited liability company was
19 organized.

20 (e) As used in the section, "qualified person" means:

21 (1) Any natural person licensed to practice the same type of profession
22 which any professional corporation is authorized to practice;

23 (2) the trustee of a trust which is a qualified trust under subsection
24 (a) of section 401 of the federal internal revenue code of 1986, as in effect,
25 on July 1, 1999, or of a contribution plan which is a qualified employee
26 stock ownership plan under subsection (a) of section 409A of the federal
27 internal revenue code of 1986, as in effect, on July 1, 1999;

28 (3) the trustee of a revocable living trust established by a natural
29 person who is licensed to practice the type of profession which any pro-
30 fessional corporation is authorized to practice, if the terms of such trust
31 provide that such natural person is the principal beneficiary and sole
trustee of such trust and such trust does not continue to hold title to
membership in the limited liability company following such natural per-
son's death for more than a reasonable period of time necessary to dispose
of such membership; or

36 (4) a Kansas professional corporation or foreign professional corpo-
37 ration in which at least one member or shareholder is authorized by a
38 licensing body, as defined in K.S.A. 1998 Supp. 74-146, and amendments
39 thereto, to render in this state a professional service permitted by the
40 articles of organization; or

41 (5) a general partnership or limited liability company, if all partners
42 or members thereof are authorized to render the professional services
43 permitted by the articles of organization of the issuing limited liability

1 company formed pursuant to this section and in which at least one partner
 2 or member is authorized by a licensing authority of this state to render
 3 in this state the professional services permitted by the articles of organiza-
 4 tion of the limited liability company.

5 (f) Nothing in this act shall restrict or limit in any manner the au-
 6 thority and duty of any licensing body, as defined in K.S.A. 1998 Supp.
 7 74-146, and amendments thereto, for the licensing of individual persons
 8 rendering a professional service or the practice of the profession which
 9 is within the jurisdiction of the licensing body, notwithstanding that the
 10 person is an officer, manager, member or employee of a limited liability
 company organized to exercise powers of a professional association or
 corporation. Each licensing body may adopt rules and regulations gov-
 erning the practice of each profession as are necessary to enforce and
 comply with this act and the law applicable to each profession.

15 (g) A licensing body, as defined in K.S.A. 1998 Supp. 74-146, and
 16 amendments thereto, the attorney general or district or county attorney
 17 may bring an action in the name of the state of Kansas in quo warranto
 18 or injunction against a limited liability company engaging in the practice
 19 of a profession with complying with the provisions of this act.

20 (h) A limited liability company organized to exercise powers of a pro-
 21 fessional association or professional corporation under the Kansas limited
 22 liability company act prior to July 1, 1999, shall file with the secretary of
 23 state at the time of making an annual report for the calendar year 1999
 24 a certificate by the licensing body, as defined in K.S.A. 1998 Supp. 74-
 25 146, and amendments thereto, of the profession involved that each of the
 26 members is duly licensed to practice that profession, and that the pro-
 27 posed company name has been approved.

28 Sec. 8. Except as provided in an operating agreement, a member or
 29 manager may lend money to, borrow money from, act as a surety, guar-
 30 antor or endorser for, guarantee or assume one or more obligations of,
 provide collateral for, and transact other business with, a limited liability
 company and, subject to other applicable law, has the same rights and
 obligations with respect to any such matter as a person who is not a
 member or manager.

35 Sec. 9. (a) Subject to such standards and restrictions, if any, as are
 36 set forth in its operating agreement, a limited liability company may, and
 37 shall have the power to, indemnify and hold harmless any member or
 38 manager or other person from and against any and all claims and demands
 39 whatsoever.

40 (b) To the extent that a member, manager, officer, employee or agent
 41 has been successful on the merits or otherwise or the defenses of any
 42 action, suits or proceeding, or in defense of any issue or matter therein,
 43 such director, officer, employee or agent shall be indemnified against

Sec. 8 Comments: This is a new section comparable to K.S.A. 17-7613 and clarifies that a member or manager may enter into credit transactions with the limited liability company and have those transactions retain their character as credit transactions.

Sec. 9 Comments: This is a new section comparable to Section 17-6305 of the Kansas Corporate Code, and clarifies that managers, members, officers, employees and others may obtain indemnity from the LLC.

1 expenses actually and reasonably incurred by such person in connection
2 therewith, including attorney fees.

3 Sec. 10. (a) Upon application of any member or manager, the district
4 court may hear and determine the validity of any admission, election,
5 appointment, removal or resignation of a manager of a limited liability
6 company, and the right of any person to become or continue to be a
7 manager of a limited liability company, and, in case the right to serve as
8 a manager is claimed by more than one person, may determine the person
9 or persons entitled to serve as managers; and to that end make such order
10 or decree in any such case as may be just and proper, with power to
11 enforce the production of any books, papers and records of the limited
liability company relating to the issue. In any such application, the limited
liability company shall be named as a party, and service of copies of the
application upon the resident agent of the limited liability company shall
be deemed to be service upon the limited liability company and upon the
person or persons whose right to serve as a manager is contested and
upon the person or persons, if any, claiming to be a manager or claiming
the right to be a manager; and the resident agent shall forward immedi-
ately a copy of the application to the limited liability company and to the
person or persons whose right to serve as a manager is contested and to
the person or persons, if any, claiming to be a manager or the right to be
a manager, in a postpaid, sealed, registered letter addressed to such lim-
ited liability company and such person or persons at their post-office
addresses last known to the resident agent or furnished to the resident
agent by the applicant member or manager. The court may make such
order respecting further or other notice of such application as it deems
proper under these circumstances.

28 (b) Upon application of any member or manager, the district court
29 may hear and determine the result of any vote of members or managers
30 upon matters as to which the members or managers of the limited liability
31 company, or any class or group of members or managers, have the right
to vote pursuant to the operating agreement or other agreement or this
act (other than the admission, election, appointment, removal or resig-
nation of managers). In any such application, the limited liability company
shall be named as a party, and service of the application upon the resident
agent of the limited liability company shall be deemed to be service upon
the limited liability company, and no other party need be joined in order
for the court to adjudicate the result of the vote. The court may make
such order respecting further or other notice of such application as it
deems proper under these circumstances.

41 (c) Nothing herein contained limits or affects the right to serve pro-
42 cess in any other manner now or hereafter provided by law. This section
43 is an extension of and not a limitation upon the right otherwise existing

*Sec. 10 Comments: This is a new section and provides for resolution of
disputes involving the manager and its decisions.*

1 of service of legal process upon nonresidents.

2 Sec. 11. Any action to interpret, apply or enforce the provisions of
3 an operating agreement, or the duties, obligations or liabilities of a limited
4 liability company to the members or managers of the limited liability
5 company, or the duties, obligations or liabilities among members or man-
6 agers and of members or managers to the limited liability company, or
7 the rights or powers of, or restrictions on, the limited liability company,
8 members or managers, may be brought in the district court.

9 Sec. 12. (a) In order to form a limited liability company, articles of
10 organization shall be filed with the secretary of state and set forth:

(1) The name of the limited liability company;

(2) the address of the registered office and the name and address of
the resident agent for service of process required to be maintained by
section 5, and amendments thereto;

(3) any other matters the members determine to include therein; and

16 (4) if the limited liability company is organized to exercise the powers
17 of a professional association or corporation, each such profession shall be
18 stated.

19 (b) A limited liability company is formed at the time of the filing of
20 the initial articles of organization with the secretary of state or at any later
21 date or time specified in the articles of organization which is not later
22 than 90 days after the date of filing, if, in either case, there has been
23 substantial compliance with the requirements of this section. A limited
24 liability company formed under this act shall be a separate legal entity,
25 the existence of which as a separate legal entity shall continue until can-
26 cellation of the limited liability company's articles of organization.

27 (c) An operating agreement may be entered into either before, after
28 or at the time of the filing of the articles of organization and, whether
29 entered into before, after or at the time of such filing, may be made
30 effective as of the formation of the limited liability company or at such
other time or date as provided in the operating agreement.

Sec. 13. (a) Articles of organization are amended by filing a certifi-
cate of amendment thereto with the secretary of state. The certificate of
amendment shall set forth:

(1) The name of the limited liability company; and

(2) the amendment to the articles of organization.

36 (b) A manager or, if there is no manager, then any member who
37 becomes aware that any statement in the articles of organization was false
38 when made, or that any matter described has changed making the articles
39 of organization false in any material respect, shall promptly amend the
40 articles of organization.
41

42 (c) Articles of organization may be amended at any time for any other
43 proper purpose.

Sec. 11 Comments: This is a new section establishing the jurisdiction of the District Court to hear disputes involving limited liability companies.

Sec. 12 Comments: Kansas and Delaware requirements are similar; Delaware requires less information in the initial organizational document. Delaware does not specify a time frame for the future effective date of the filing of the initial organizational document as in KSA 17-7609(c)(2). Limiting the required information provides greater flexibility to organizers while preserving the notice element of doing business as an LLC. Delaware permits but does not require an operating agreement, whereas Kansas in 17-7613 requires an operating agreement. The statute conforms to Kansas nomenclature. Subsection (a)(4) was added to the Kansas LLC Act in 1998. (HB 2126)

Sec. 13 Comments: The Delaware provision does not enumerate all events requiring amendment to organizational document but simply requires amendment when statement in such organizational document is false in any material respect. Del 18-211 also allows the LLC to file a "Certificate of Correction" to correct an inaccuracy in the original Certificate as an alternative for filing a Certificate of Amendment. The simpler Delaware procedure is better.

1 (d) Unless otherwise provided in this act or unless a later effective
 2 date or time (which shall be a date or time certain within 90 days of the
 3 date of filing) is provided for in the certificate of amendment, a certificate
 4 of amendment shall be effective at the time of its filing with the secretary
 5 of state.

6 Sec. 14. Articles of organization shall be canceled upon the dissolu-
 7 tion and the completion of winding up of a limited liability company, or
 8 as provided in subsection (d) of section 5, and amendments thereto, or
 9 section 78, and amendments thereto, or upon the filing of a certificate of
 10 merger or consolidation if the limited liability company is not the surviv-
 11 ing or resulting entity in a merger or consolidation, or upon the conversion
 of a domestic limited liability company approved in accordance with sec-
 tion 24, and amendments thereto, by filing a certificate of cancellation
 with the secretary of state to accomplish the cancellation of articles of
 organization upon the dissolution and the completion of winding up of a
 limited liability company or upon the conversion of a domestic limited
 liability company approved in accordance with section 24, and amend-
 ments thereto, and which shall set forth:

- 15 (a) The name of the limited liability company;
- 16 (b) the reason for filing the certificate of cancellation;
- 17 (c) the future effective date or time (which shall be a date or time
 18 certain not later than 90 days after the date of filing) of cancellation if it
 19 is not to be effective upon the filing of the certificate;
- 20 (d) Any other information the person filing the certificate of cancel-
 21 lation determines.

22 Sec. 15. (a) Each of the articles or any certificate required by this act
 23 to be filed with the secretary of state shall be executed by one or more
 24 authorized persons.

25 (b) Unless otherwise provided in an operating agreement, any person
 26 may sign the articles, any certificate, any amendment thereof, or enter
 27 into an operating agreement or amendment thereof by an agent, including
 28 an attorney-in-fact. An authorization, including a power of attorney, to
 29 sign any articles, certificate or any amendments thereof, or to enter into
 30 an operating agreement or amendment thereof need not be in writing,
 31 need not be sworn to, verified or acknowledged, and need not be filed
 with the secretary of state, but if in writing, must be retained by the
 limited liability company.

32 (c) The execution of articles or a certificate by an authorized person
 33 constitutes an oath or affirmation, under the penalties of perjury that, to
 34 the best of the authorized person's knowledge and belief, the facts stated
 35 therein are true.

36 Sec. 16. (a) If a person required to execute a certificate required by
 37 this act fails or refuses to do so, any other person who is adversely affected

Sec. 14 Comments: Kansas currently has a two step process for dissolution, filing of statement of intent to dissolve and filing of articles of dissolution. Upon filing of articles of dissolution, the Kansas Secretary of State will then issue a certificate of dissolution. Delaware has a single step process by requiring only the filing of a cancellation certificate with the Secretary of State. The Kansas Secretary of State's office approves the movement to a one-step dissolution process.

Sec. 15 Comments: Kansas 17-7634 enumerates specifically who may sign various documents as opposed to an "authorized person". The recommended language follows Delaware, but includes more detail regarding who is the authorized power.

Sec. 16 on next page

1 by the failure or refusal may petition the district court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

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6 (b) If a person required to execute an operating agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the operating agreement or amendment thereof. If the court finds that the operating agreement or amendment thereof should be executed and that any person required to execute the operating agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

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15 Sec. 17. (a) The original signed copy, together with a duplicate copy which may be either a signed or conformed copy, of articles of organization or any certificate to be filed pursuant to this act, shall be filed with the secretary of state. A person who executes a certificate, statement or articles as an agent or fiduciary shall not be required to exhibit evidence of the person's authority as a prerequisite to filing. Any signature on any articles or certificate authorized to be filed with the secretary of state under any provision of this act may be a facsimile, a conformed signature or an electronically transmitted signature. Unless the secretary of state finds that any filing does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

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25 (1) Certify that such document has been filed in the secretary of state's office by endorsing upon the original filing the word "filed" and the date and hour of the filing; in the absence of actual fraud, this endorsement is conclusive of the date and time of its filing;

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29 (2) file and index the endorsed document; and

30 (3) return the duplicate copy, similarly certified, to the person who filed it or such person's representative.

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34 (b) The articles of organization shall be amended as provided in a certificate of amendment (or judicial decree of amendment) upon the filing of the certificate of amendment (or judicial decree of amendment) with the secretary of state or upon the future effective date specified in the certificate of amendment. An inaccuracy in the articles of organization may be corrected by filing a certificate of correction with the secretary of state as provided in section 22, and amendments thereto. The articles of organization are canceled upon the issuance of a certificate of cancellation (or certificate of merger or consolidation where the limited liability company is not the surviving or resulting entity) by the secretary of state.

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42 (c) The fee required by this act shall be paid at the time of the filing of any articles of organization or any certificate to be filed pursuant to

Sec. 16 Comments: This section is new and creates an additional remedy for members or managers in the event a person who is required to execute a certificate or agreement refuses or fails to do so.

Sec 17 Comments: Existing K.S.A. 17-7608 has been modified to reflect other changes in the LLC Act and proposed nomenclature, but otherwise is unchanged. Existing K.S.A. 17-7652 governing filing by facsimile has also been included here with some modifications. With respect to a facsimile filing, the Kansas Secretary of State has agreed to eliminate the need to file an original of the document within seven days.

1 this act.
2 (d) The fee required by this act shall be paid for a certified copy of
3 any paper on file pursuant to this act and the fee fixed pursuant to this
4 act shall be paid for each page copied.
5 (e) The secretary of state may prescribe a telefacsimile communica-
6 tion fee in addition to any filing fees to cover the cost of such services.
7 This fee must be paid prior to acceptance of a telefacsimile communi-
8 cation and shall be deposited into the information and copy service fee
9 fund.
10 (f) Upon filing the articles of organization of a limited liability com-
11 pany organized to exercise powers of a professional association or pro-
12 fessional corporation, the limited liability company shall file with the sec-
13 retary of state a certificate by the licensing body, as defined in K.S.A.
14 1998 Supp. 74-146, and amendments thereto, of the profession involved
15 that each of the members is duly licensed to practice that profession, and
16 that the proposed company name has been approved.
17 Sec. 18. The fact that articles of organization, or amendments
18 thereto, of a limited liability company are on file with the secretary of
19 state is notice that the entity formed in connection with the filing of the
20 articles of organization is a limited liability company formed under the
21 laws of the state of Kansas and is notice for all purposes with respect to
22 all matters required to be set forth therein.
23 Sec. 19. (a) A limited liability company, whenever desired, may inte-
24 grate into a single instrument all of the provisions of its articles of or-
25 ganization which are then in effect and operative as a result of there
26 having previously been filed with the secretary of state one or more cer-
27 tificates or other instruments pursuant to this act, and it may at the same
28 time also further amend its articles of organization by adopting restated
29 articles of organization.
30 (b) If the restated articles of organization merely restate and integrate
31 but do not further amend the initial articles of organization, as previously
32 amended or supplemented by any certificate or instrument that was ex-
33 ecuted and filed pursuant to this act, they shall be specifically designated
34 in their heading as "restated articles of organization" together with such
35 other words as the company may deem appropriate and shall be executed
36 and filed with the secretary of state. If the restated articles restate and
37 integrate and also further amend in any respect the articles of organiza-
38 tion, as previously amended or supplemented, they shall be specifically
39 designated in their heading as "amended and restated articles of organi-
40 zation" together with such other words as the company may deem ap-
41 propriate and shall be executed and filed with the secretary of state.
42 (c) Restated articles of organization shall be specifically designated as
43 such in the heading. They shall state, either in their heading or in an

Sec. 18 Comments: Similar to current K.S.A. 17-7609(a).

Sec. 19 Comments: The Delaware and Kansas provisions are substantially the same. Existing K.S.A. 17-7635 has been modified slightly.

1 introductory paragraph, the company's present name; if it has been
 2 changed, the name under which it was originally filed; the date of filing
 3 of its original articles of organization with the secretary of state; and the
 4 future effective date of the restated articles of organization if they are not
 5 to be effective upon the filing of the restated articles of organization with
 6 the secretary of state (such future effective date must be within 90 days
 7 of the date of filing such restated articles of organization with the secre-
 8 tary of state). Restated articles also shall state that they were duly executed
 9 and filed in accordance with the provisions of this section. If the restated
 10 articles only restate and integrate and do not further amend the provisions
 of the articles of organization as previously amended or supplemented
 and there is no discrepancy between those provisions and the provisions
 of the restated articles, they shall state that fact as well.

15 (d) Upon the filing of the restated articles of organization with the
 16 secretary of state, or upon the future effective date of restated articles of
 17 organization as provided for therein, the initial articles, as previously
 18 amended or supplemented, shall be superseded. Thereafter the restated
 19 articles of organization, including any further amendment or changes
 20 made by the restated articles, shall be the articles of organization, but the
 original effective date of formation shall remain unchanged.

21 (e) Any amendment or change made in connection with the restate-
 22 ment and integration of the articles of organization shall be subject to any
 23 other provision of this act, not inconsistent with this section, which would
 24 apply if a separate certificate of amendment were filed to make the
 25 amendment or change.

26 Sec. 20. (a) Pursuant to an agreement of merger or consolidation, a
 27 domestic limited liability company may merge or consolidate with or into
 28 one or more limited liability companies formed under the laws of this
 29 state or any other state, with such limited liability company as the agree-
 30 ment shall provide being the surviving or resulting limited liability com-
 31 pany. Unless otherwise provided in the limited liability company oper-
 ating agreement, a merger or consolidation shall be approved by each
 domestic limited liability company which is to merge or consolidate by
 the members, or if there is more than one class or group of members,
 35 then by each class or group of members, in either case, by the affirmative
 36 vote or consent of not less than a majority in interest of the remaining
 37 members. In connection with a merger or consolidation hereunder, rights
 38 or securities of, or interests in, a domestic limited liability company which
 39 is a constituent party to the merger or consolidation may be exchanged
 40 for or converted into cash, property, rights or securities of, or interests
 41 in, the surviving or resulting limited liability company or, in addition to
 42 or in lieu thereof, may be exchanged for or converted into cash, property,
 43 rights or securities of, or interests in, a limited liability company which is

Sec. 20 Comments: Kansas 17-7650 allowed merger or consolidation of domestic LLC with other LLCs (including foreign LLC). Delaware 18-209 allows merger or consolidation with other business entities. Kansas currently has a "catch-all" statute that allows different entities to merge (K.S.A. 17-7701), and therefore this section only addresses LLC mergers. The definition of a Majority in Interest has been removed from this section and inserted in the definition section.

1 not the surviving or resulting limited liability company in the merger or
2 consolidation. Notwithstanding prior approval, an agreement of merger
3 or consolidation may be terminated or amended pursuant to a provision
4 for such termination or amendment contained in the agreement of
5 merger or consolidation.

6 (b) The limited liability company surviving or resulting in or from the
7 merger or consolidation shall file a certificate of merger or consolidation
8 with the secretary of state. The certificate of merger or consolidation shall
9 state:

10 (1) The name and jurisdiction of formation or organization of each
11 of the limited liability companies which is to merge or consolidate;

(2) that an agreement of merger or consolidation has been approved
and executed by each of the limited liability companies which is to merge
or consolidate;

16 (3) the name of the surviving or resulting limited liability company;

17 (4) the future effective date or time of the merger or consolidation
18 if it is not to be effective upon the filing of the certificate of merger or
19 consolidation, which date shall, in no event, exceed 90 days after the date
the certificate is filed in the secretary of state's office;

20 (5) that the agreement of merger or consolidation is on file at a place
21 of business of the surviving or resulting limited liability company, and
22 shall state the address thereof;

23 (6) that a copy of the agreement of merger or consolidation will be
24 furnished by the surviving or resulting limited liability company, on re-
25 quest and without cost, to any member of any limited liability company
26 which is to merge or consolidate; and

27 (7) if the surviving or resulting entity is not a domestic limited liability
28 company, a statement that such surviving entity agrees that it may be
29 served with process in the state of Kansas in any action, suit or proceeding
30 for the enforcement of any obligation of any domestic limited liability
31 company which is to merge or consolidate, irrevocably appointing the
secretary of state as its 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 it by the secretary of state.

36 (c) Unless a future effective date or time is provided in a certificate
37 of merger or consolidation, in which event a merger or consolidation shall
38 be effective at any such future effective date or time, a merger or con-
39 solidation shall be effective upon the filing with the secretary of state of
40 a certificate of merger or consolidation. If a certificate of merger or con-
41 solidation provides for a future effective date or time and if an agreement
42 of merger or consolidation is amended to change the future effective date
43 or time, or to change any other matter described in the certificate of
merger or consolidation so as to make the certificate of merger or con-

1 solidation false in any material respect, as permitted by subsection (b) of
 2 this section prior to the future effective date or time, the certificate of
 3 merger or consolidation shall be amended by the filing of a certificate of
 4 amendment of a certificate of merger or consolidation which shall identify
 5 the certificate of merger or consolidation and the agreement of merger
 6 or consolidation which has been amended and shall state that the agree-
 7 ment of merger or consolidation has been amended and shall set forth
 8 the amendment to the certificate of merger or consolidation. If a certifi-
 9 cate of merger or consolidation provides for a future effective date or
 10 time and if an agreement of merger or consolidation is terminated as
 11 permitted by subsection (a) of this section prior to the future effective
 12 date or time, the certificate of merger or consolidation shall be terminated
 13 by the filing of a certificate of termination of a merger or consolidation
 14 which shall identify the certificate of merger or consolidation and the
 15 agreement of merger or consolidation which has been terminated and
 16 shall state that the agreement of merger or consolidation has been
 17 terminated.

18 (d) A certificate of merger or consolidation shall act as a certificate
 19 of cancellation for a domestic limited liability company which is not the
 20 surviving or resulting entity in the merger or consolidation.

21 (e) An agreement of merger or consolidation approved in accordance
 22 with subsection (a) of this section may:

- 23 (1) Effect any amendment to the operating agreement; or
- 24 (2) effect the adoption of a new operating agreement.

25 Any amendment to an operating agreement or adoption of a new op-
 26 erating agreement made pursuant to the foregoing provision shall be ef-
 27 fective at the effective time or date of the merger or consolidation. The
 28 provisions of this subsection shall not be construed to limit the accom-
 29 plishment of a merger or of any of the matters referred to herein by any
 30 other means provided for in an operating agreement or other agreement
 31 or as otherwise permitted by law, including that the operating agreement
 32 of any constituent limited liability company to the merger or consolidation
 33 (including a limited liability company formed for the purpose of consum-
 34 mating a merger or consolidation) shall be the operating agreement of
 35 the surviving or resulting limited liability company.

36 (f) When any merger or consolidation shall have become effective
 37 under this section, for all purposes of the laws of the state of Kansas, all
 38 of the rights, privileges and powers of each of the limited liability com-
 39 panies that have merged or consolidated, and all property, real, personal
 40 and mixed, and all debts due to any of the limited liability companies, as
 41 well as all other things and causes of action belonging to each of such
 42 limited liability companies, shall be vested in the surviving or resulting
 43 limited liability company, and shall thereafter be the property of the sur-

1 living or resulting limited liability company as they were of each of the
 2 limited liability companies that have merged or consolidated, and the title
 3 to any real property vested by deed or otherwise, under the laws of the
 4 state of Kansas, in any of such limited liability companies, shall not revert
 5 or be in any way impaired by reason of this section, but all rights of
 6 creditors and all liens upon any property of any of the limited liability
 7 companies shall be preserved unimpaired, and all debts, liabilities and
 8 duties of each of the limited liability companies that have merged or
 9 consolidated shall thenceforth attach to the surviving or resulting limited
 10 liability company and may be enforced against it to the same extent as if
 11 the debts, liabilities and duties had been incurred or contracted by it.
 Unless otherwise agreed, a merger or consolidation of a limited liability
 company, including a limited liability company which is not the surviving
 or resulting entity in the merger or consolidation, shall not require such
 15 limited liability company to wind up its affairs under section 57, and
 16 amendments thereto or pay its liabilities and distribute its assets under
 17 Section 58, and amendments thereto.

18 (g) A limited liability company may merge or consolidate with or into
 19 one or more corporations, business trusts or associations, real estate in-
 20 vestment trusts, common-law trusts, or any other unincorporated busi-
 21 ness, including a partnership (whether general, limited or a registered
 22 limited liability partnership), in accordance with the provisions of K.S.A.
 23 17-7701, and amendments thereto.

24 Sec. 21. An operating agreement or an agreement of merger or con-
 25 solidation may provide that contractual appraisal rights with respect to a
 26 limited liability company interest or another interest in a limited liability
 27 company shall be available for members or limited liability company in-
 28 terests in connection with any amendment of the operating agreement,
 29 any merger or consolidation in which the limited liability company is a
 30 constituent party to the merger or consolidation, or the sale of all or
 31 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.

35 Sec. 22. (a) Whenever any articles or certificate authorized to be filed
 36 with the secretary of state under any provision of this act has been so
 37 filed and is inaccurate in any respect or was defectively or erroneously
 38 executed, such articles or certificate may be corrected by filing with the
 39 secretary of state a certificate of correction of such articles or certificate.
 40 The certificate of correction shall specify the inaccuracy or defect to be
 41 corrected, shall set forth the portion of the articles or certificate in cor-
 42 rected form and shall be executed and filed as required by this act. The
 43 certificate of correction shall be effective as of the date the original articles
 or certificate was filed, except as to those persons who are substantially

Sec. 21 Comments: This is a new section. This section adds no substantive rights because any appraisal rights have to be in the agreement between the parties. Including the section may eliminate any issue regarding the enforceability of contractual appraisal rights, however.

Sec. 22 Comments: This is a new section and is helpful because it allows the correction to be retroactively effective, unlike an amendment which is prospective only.

1 and adversely affected by the correction, and as to those persons the
2 certificate of correction shall be effective from the filing date.

3 (b) In lieu of filing a certificate of correction, articles or a certificate
4 may be corrected by filing with the secretary of state a corrected certifi-
5 cate which shall be executed and filed as if the corrected certificate were
6 the articles or certificate being corrected, and a fee equal to the fee pay-
7 able to the secretary of state if the articles or certificate being corrected
8 were then being filed shall be paid and collected by the secretary of state
9 for the use of the state of Kansas in connection with the filing of the
10 corrected certificate. The corrected certificate shall be specifically des-
11 ignated as such in its heading, shall specify the inaccuracy or defect to be
12 corrected, and shall set forth the entire articles or certificate in corrected
13 form. Articles or a certificate corrected in accordance with this section
14 shall be effective as of the date the original articles or certificate was filed,
15 except as to those persons who are substantially and adversely affected
16 by the correction and as to those persons the articles or certificate as
17 corrected shall be effective from the filing date.

18 (c) The secretary of state may correct the secretary's own errors on
19 the secretary's own motion.

20 Sec. 23. (a) As used in this section, the term "other entity" means a
21 business trust or association, a real estate investment trust, a common-
22 law trust or any other unincorporated business, including a partnership,
23 whether general (including a registered limited liability partnership) or
24 limited (including a registered limited liability limited partnership) or a
25 foreign limited liability company.

26 (b) Any other entity may convert to a domestic limited liability com-
27 pany by complying with subsection (h) of this section and filing with the
28 secretary of state in accordance with section 17, and amendments thereto:

29 (1) A certificate of conversion to limited liability company that has
30 been executed by one or more authorized persons in accordance with
section 15, and amendments thereto; and

(2) articles of organization that comply with section 12, and amend-
ments thereto, and have been executed by one or more authorized per-
sons in accordance with section 15, and amendments thereto.

36 (c) The certificate of conversion to limited liability company shall
state:

37 (1) the date on which and jurisdiction where the other entity was first
38 created, formed or otherwise came into being and, if it has changed, its
39 jurisdiction immediately prior to its conversion to a domestic limited li-
40 ability company;

41 (2) the name of the other entity immediately prior to the filing of the
42 certificate of conversion to limited liability company;

43 (3) the name of the limited liability company as set forth in its articles

*Sec.23 Comments: The Kansas statute only provided for conversion
of general or limited partnership to LLC form. Delaware permits other
unincorporated businesses to convert to LLC form. Broadening the conversion
option will be helpful to business owners.*

1 of organization filed in accordance with subsection (b) of this section; and
2 (4) the future effective date or time (which shall be a date or time
3 certain not later than 90 days after the date of filing) of the conversion
4 to a limited liability company if it is not to be effective upon the filing of
5 the certificate of conversion to limited liability company and the articles
6 of organization.

7 (d) Upon the filing with the secretary of state of the certificate of
8 conversion to limited liability company and the articles of organization or
9 upon the future effective date or time of the certificate of conversion to
10 limited liability company and the articles of organization, the other entity
11 shall be converted into a domestic limited liability company and the limited
12 liability company shall thereafter be subject to all of the provisions
13 of this act, except that notwithstanding section 12, and amendments
14 thereto, the existence of the limited liability company shall be deemed to
15 have commenced on the date the other entity commenced its existence
16 in the jurisdiction in which the other entity was first created, formed,
17 incorporated or otherwise came into being.

18 (e) The conversion of any other entity into a domestic limited liability
19 company shall not be deemed to affect any obligations or liabilities of the
20 other entity incurred prior to its conversion to a domestic limited liability
21 company or the personal liability of any person incurred prior to such
22 conversion.

23 (f) When any conversion shall have become effective under this section,
24 for all purposes of the laws of the state of Kansas, all of the rights,
25 privileges and powers of the other entity that has converted, and all property,
26 real, personal and mixed, and all debts due to such other entity, as
27 well as all other things and causes of action belonging to such other entity,
28 shall be vested in the domestic limited liability company and shall thereafter
29 be the property of the domestic limited liability company as they
30 were of the other entity that has converted, and the title to any real
31 property vested by deed or otherwise in such other entity shall not revert
32 or be in any way impaired by reason of this act, but all rights of creditors
33 and all liens upon any property of such other entity shall be preserved
34 unimpaired, and all debts, liabilities and duties of the other entity that
35 has converted shall thenceforth attach to the domestic limited liability
36 company and may be enforced against it to the same extent as if such
37 debts, liabilities and duties had been incurred or contracted by it.

38 (g) Unless otherwise agreed, or as required under applicable non-
39 Kansas law, the converting other entity shall not be required to wind up
40 its affairs or pay its liabilities and distribute its assets, and the conversion
41 shall not be deemed to constitute a dissolution of such other entity and
42 shall constitute a continuation of the existence of the converting other
43 entity in the form of a domestic limited liability company.

1 (h) Prior to filing a certificate of conversion to limited liability com-
 2 pany with the secretary of state, the conversion shall be approved in the
 3 manner provided for by the document, instrument, agreement or other
 4 writing, as the case may be, governing the internal affairs of the other
 5 entity and the conduct of its business or by applicable law, as appropriate.

6 (i) The provisions of this section shall not be construed to limit the
 7 accomplishment of a change in the law governing, or the domicile of, any
 8 other entity to the state of Kansas by any other means provided for in an
 9 operating agreement or other agreement or as otherwise permitted by
 10 law, including by the amendment of an operating agreement or other
 agreement.

15 Sec. 24. A domestic limited liability company may convert to a busi-
 16 ness trust or association, a real estate investment trust, a common-law
 17 trust, a general partnership (including a registered limited liability part-
 18 nership) a limited partnership or a limited liability partnership, organized,
 19 formed or created under the laws of the state of Kansas, upon the au-
 20 thorization of such conversion in accordance with this section. If the op-
 21 erating agreement specifies the manner of authorizing a conversion of
 22 the limited liability company, the conversion shall be authorized as spec-
 23 ified in the operating agreement. If the operating agreement does not
 24 specify the manner of authorizing a conversion of the limited liability
 25 company and does not prohibit a conversion of the limited liability com-
 26 pany, the conversion shall be authorized in the same manner as is spec-
 27 ified in the operating agreement for authorizing a merger or consolidation
 28 that involves the limited liability company as a constituent party to the
 29 merger or consolidation. If the operating agreement does not specify the
 30 manner of authorizing a conversion of the limited liability company or a
 merger or consolidation that involves the limited liability company as a
 constituent party and does not prohibit a conversion of the limited liability
 company, the conversion shall be authorized by the approval by majority
 in interest of the members.

35 Sec. 25. (a) In connection with the formation of a limited liability
 company, a person is admitted as a member of the limited liability com-
 pany upon the later to occur of:

- 36 (1) The formation of the limited liability company; or
- 37 (2) the time provided in and upon compliance with the operating
- 38 agreement or, if the operating agreement does not so provide, when the
- 39 person's admission is reflected in the records of the limited liability
- company.

40 (b) After the formation of a limited liability company, a person is
 41 admitted as a member of the limited liability company:

- 42 (1) In the case of a person who is not an assignee of a limited liability
- 43 company interest, including a person acquiring a limited liability company

Sec. 24 Comments: Allowing an LLC to convert to other entities might be helpful, particularly in regulated industries where asset transfers may be very difficult or expensive to successfully complete in a timely manner.

Sec. 25 Comments: Kansas does not have a provision comparable to the Delaware code, and in fact makes no specific provision for admission of members. Under the Kansas act, a Member is defined as one who is admitted to membership in accordance with the Act, but no provision for admission is provided in the Act. The transferability provision provides that additional members (an undefined term) may only be added in accordance with the operating agreement. In the absence of a specific provision in the operating agreement, the Kansas Act may bar additional members.

The Delaware Act specifically addresses admission of members, establishes a time for admission, and contains a default provision if the operating agreement does not address the subject. This may be important for income tax and other

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1 interest directly from the limited liability company and a person to be
 2 admitted as a member of the limited liability company without acquiring
 3 a limited liability company interest in the limited liability company at the
 4 time provided in and upon compliance with the operating agreement or,
 5 if the operating agreement does not so provide, upon the consent of all
 6 members and when the person's admission is reflected in the records of
 7 the limited liability company;

8 (2) in the case of an assignee of a limited liability company interest,
 9 as provided in subsection (a) of section 53, and amendments thereto, and
 10 at the time provided in and upon compliance with the operating agree-
 11 ment or, if the operating agreement does not so provide, when any such
 person's permitted admission is reflected in the records of the limited
 liability company; or

15 (3) unless otherwise provided in an agreement of merger or consol-
 16 idation, in the case of a person acquiring a limited liability company in-
 17 terest in a surviving or resulting limited liability company pursuant to a
 18 merger or consolidation approved in accordance with subsection (b) of
 19 section 20, and amendments thereto, at the time provided in and upon
 20 compliance with the operating agreement of the surviving or resulting
 limited liability company.

21 (c) A person may be admitted to a limited liability company as a
 22 member of the limited liability company and may receive a limited liability
 23 company interest in the limited liability company without making a con-
 24 tribution or being obligated to make a contribution to the limited liability
 25 company. Unless otherwise provided in an operating agreement, a person
 26 may be admitted to a limited liability company as a member of the limited
 27 liability company without acquiring a limited liability company interest in
 28 the limited liability company. Unless otherwise provided in a operating
 29 agreement, a person may be admitted as the sole member of a limited
 30 liability company without making a contribution or being obligated to
 31 make a contribution to the limited liability company or without acquiring
 a limited liability company interest in the limited liability company.

36 Sec. 26. (a) An operating agreement may provide for classes or
 37 groups of members having such relative rights, powers and duties as the
 38 operating agreement may provide, and may make provision for the future
 39 creation in the manner provided in the operating agreement of additional
 40 classes or groups of members having such relative rights, powers and
 41 duties as may from time to time be established, including rights, powers
 42 and duties senior to existing classes and groups of members. An operating
 43 agreement may provide for the taking of an action, including the amend-
 ment of the operating agreement, without the vote or approval of any
 member or class or group of members, including an action to create under
 the provisions of the operating agreement a class or group of limited

reasons. In addition this provision contains a fail safe provision for admission of members upon a transfer of an interest, if the operating agreement fails to provide for the admission of new or subsequent members.

Sec. 26 Comments: The Kansas Act permits members to determine in their operating agreement voting rights of members and contains a default provision-one member one vote per capita voting-in the absence of a specific provision otherwise. The Kansas Act does not authorize nor prohibit more than one class of interest. K.S.A. 17-7620 (d) requires per capita majority approval of an act not in the ordinary course of business of the LLC, unless the operating agreement otherwise provides, even if multiple classes of interests exist. The definition of a majority in interest is contained in Section 2(10). The text of subsection (e) has been retained here to make it clear that the parties may by agreement change the definition.

1 liability company interests that was not previously outstanding. An oper-
2 ating agreement may provide that any member or class or group of mem-
3 bers shall have no voting rights.

4 (b) An operating agreement may grant to all or certain identified
5 members or a specified class or group of the members the right to vote
6 separately or with all or any class or group of the members or managers,
7 on any matter. Voting by members may be on a per capita, number,
8 financial interest, class, group or any other basis.

9 (c) An operating agreement which grants a right to vote may set forth
10 provisions relating to notice of the time, place or purpose of any meeting
at which any matter is to be voted on by any members, waiver of any such
notice, action by consent without a meeting, the establishment of a record
date, quorum requirements, voting in person or by proxy, or any other
matter with respect to the exercise of any such right to vote.

15 (d) Unless otherwise provided in an operating agreement, on any
16 matter that is to be voted on by members, the members may take such
17 action without a meeting, without prior notice and without a vote, if a
18 consent or consents in writing, setting forth the action so taken, shall be
19 signed by the members having not less than the minimum number of
20 votes that would be necessary to authorize or take such action at a meeting
21 which unless otherwise provided in the operating agreement or this act
22 shall be a majority in interest of each class entitled to vote thereon. Unless
23 otherwise provided in an operating agreement, on any matter that is to
24 be voted on by members, the members may vote in person or by proxy.

25 (e) Unless otherwise provided in the operating agreement or in this
26 act every member holding interest in profits shall be entitled to vote.

27 (f) When, under the provisions of this act or under the provisions of
28 the articles of organization or operating agreement of a limited liability
29 company, notice is required to be given to a member of a limited liability
30 company a waiver in writing signed by the person or persons entitled to
the notice, whether made before or after the time for notice to be given,
is equivalent to the giving of notice.

35 Sec. 27. (a) Except as otherwise provided by this act, the debts, ob-
36 ligations and liabilities of a limited liability company, whether arising in
37 contract, tort or otherwise, shall be solely the debts, obligations and lia-
38 bilities of the limited liability company, and no member or manager of a
39 limited liability company shall be obligated personally for any such debt,
obligation or liability of the limited liability company solely by reason of
being a member or acting as a manager of the limited liability company.

40 (b) Notwithstanding the provisions of subsection (a) of this section,
41 under an operating agreement or under another agreement, a member
42 or manager may agree to be obligated personally for any or all of the
43 debts, obligations and liabilities of the limited liability company.

The Delaware Act specifically authorizes multiple classes of ownership interests and voting rights. The Delaware Act specifically authorizes a division of powers among classes; which the Kansas Act may prohibit, and authorizes those classes to have different economic, voting, and other rights.

The Delaware Act authorizes Member action by written consent and voting by proxy. The Kansas Act contains a similar provision in 17-7612, which discusses the adoption of an operating agreement.

Sec. 27 Comments: The Kansas and Delaware Acts are very similar in intent. The Kansas Act prohibits liability to Members and managers for judgments, decrees, or court orders, and does not address liabilities otherwise arising by contract. Since such contracts would appear to be unenforceable by court action, the effect of the Kansas Act should be to achieve liability protection for the Member for contracts and torts.

The Delaware Act specifically addresses contractual and tort liability, protecting the Member and Manager. The Delaware Act specifically authorizes a member to guaranty the debt of an LLC by agreement, which is not otherwise addressed by the Kansas Act and arguably may be unenforceable in Kansas.

Subsection (c) is K.S.A. 17-7631 renumbered.

1 (c) A member or manager of a limited liability company is not a
 2 proper party to proceedings by or against a limited liability company,
 3 except when the object is to enforce a member's or manager's right
 4 against, or liability to, the limited liability company.

5 Sec. 28. A person ceases to be a member of a limited liability com-
 6 pany and shall become an assignee upon the happening of any of the
 7 following events:

8 (a) Unless otherwise provided in an operating agreement, or with the
 9 written consent of all members, a member:

- 10 (1) Makes an assignment for the benefit of creditors;
- 11 (2) files a voluntary petition in bankruptcy;
- (3) is adjudged a bankrupt or insolvent, or has entered against the
 member an order for relief, in any bankruptcy or insolvency proceeding;
- (4) files a petition or answer seeking for the member's own self any
 15 reorganization, arrangement, composition, readjustment, liquidation, dis-
 16 solution or similar relief under any statute, law or regulation;
- (5) files an answer or other pleading admitting or failing to contest
 17 the material allegations of a petition filed against the member in any
 18 proceeding of this nature;
- (6) seeks, consents to or acquiesces in the appointment of a trustee,
 20 receiver or liquidator of the member or of all or any substantial part of
 21 the member's properties; or

22 (b) Unless otherwise provided in an operating agreement, or with the
 23 written consent of all members, 120 days after the commencement of any
 24 proceeding against the member seeking reorganization, arrangement,
 25 composition, readjustment, liquidation, dissolution or similar relief under
 26 any statute, law or regulation, if the proceeding has not been dismissed,
 27 or if within 90 days after the appointment without the member's consent
 28 or acquiescence of a trustee, receiver or liquidator of the member or of
 29 all or any substantial part of the member's properties, the appointment
 30 is not vacated or stayed, or within 90 days after the expiration of any such
 31 stay, the appointment is not vacated.

Sec. 29. (a) Each member of a limited liability company has the right,
 subject to such reasonable standards (including standards governing what
 information and documents are to be furnished at what time and location
 and at whose expense) as may be set forth in an operating agreement or
 otherwise established by the manager or, if there is no manager, then by
 the members, to obtain from the limited liability company from time to
 time upon reasonable demand for any purpose reasonably related to the
 member's interest as a member of the limited liability company:

- 41 (1) True and full information regarding the status of the business and
 42 financial condition of the limited liability company;
- 43 (2) promptly after becoming available, a copy of the limited liability

*Sec. 28 Comments: The Kansas and Delaware acts have completely
 different approaches to the consequences of the bankruptcy of a member. The
 Kansas act follows the partnership model and requires dissolution of the LLC,
 unless the members vote by a majority in interest of the profits and capital to
 continue in business. The burden of a Member bankruptcy falls on the LLC and its
 Members.*

*The Delaware Act provides that the Members interest alone is dissolved
 upon the happening of certain acts which likely will lead to bankruptcy or
 receivership, including actions which are not considered by the Kansas Act.*

*In each Act, the Members under the operating agreement may agree
 differently.*

29
*Sec. 29 Comments: The initial portions of each Act (through section
 (a) of the Kansas Act) are essentially verbatim except the Delaware Act permits the
 LLC to set standards for costs, time and location of production, and the Kansas Act
 requires a Membership list to be produced alphabetically.*

*The Kansas Act specifically exonerates a Manager from personally liability
 for failing to maintain records, a provision absent from the Delaware Act.*

The Delaware Act continues in sections b, c, d, e, and f to provide:

- 1. That each Manger shall have the same right of access as the Members
- 2. That the LLC may refuse to disclose to Members trade secrets and
 confidential proprietary information

1 company's federal, state and local income tax returns for each year;
 2 (3) a current list of the name and last known business, residence or
 3 mailing address of each member and manager;
 4 (4) a copy of any written operating agreement and articles of organ-
 5 ization and all amendments thereto, together with executed copies of any
 6 written powers of attorney pursuant to which the operating agreement
 7 and any certificate and all amendments thereto have been executed;
 8 (5) true and full information regarding the amount of cash and a
 9 description and statement of the agreed value of any other property or
 10 services contributed by each member and which each member has agreed
 to contribute in the future, and the date on which each became a member;
 and

(6) other information regarding the affairs of the limited liability com-
 pany as is just and reasonable.

15 (b) Each manager shall have the right to examine all of the infor-
 16 mation described in subsection (a) of this section for a purpose reasonably
 17 related to the manager's position as a manager.

18 (c) The manager of a limited liability company shall have the right to
 19 keep confidential from the members, for such period of time as the man-
 20 ager deems reasonable, any information which the manager reasonably
 21 believes to be in the nature of trade secrets or other information the
 22 disclosure of which the manager in good faith believes is not in the best
 23 interest of the limited liability company or could damage the limited li-
 24 ability company or its business or which the limited liability company is
 25 required by law or by agreement with a third party to keep confidential.

26 (d) A limited liability company may maintain its records in other than
 27 a written form if such form is capable of conversion into written form
 28 within a reasonable time.

29 (e) Any demand by a member under this section shall be in writing
 30 and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be
 brought in the district court. If the limited liability company refuses to
 permit a member to obtain or a manager to examine the information
 described in subsection (a)(3) of this section or does not reply to the
 demand that has been made within five business days after the demand
 has been made, the demanding member or manager may apply to the
 36 district court for an order to compel such disclosure. The district court
 37 may summarily order the limited liability company to permit the de-
 38 manding member to obtain or manager to examine the information de-
 39 scribed in subsection (a)(3) of this section and to make copies or abstracts
 40 therefrom, or the district court may summarily order the limited liability
 41 company to furnish to the demanding member or manager the infor-
 42 mation described in subsection (a)(3) of this section on the condition that
 43

- 3. That the LLC may maintain its books in other than written form
- 4. That demands by Members or Managers for information must be in writing
- 5. That the Members have a remedy for a breach of the obligations by the LLC.

These provisions are absent from the Kansas Act. These provisions are believed important and useful.

Subsection (g) is renumbered K.S.A. 17-7654(b).

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1 the demanding member or manager first pay to the limited liability com-
 2 pany the reasonable cost of obtaining and furnishing such information
 3 and on such other conditions as the district court deems appropriate.
 4 When a demanding member seeks to obtain or a manager seeks to ex-
 5 amine the information described in subsection (a)(3) of this section, the
 6 demanding member or manager shall first establish (1) that the demand-
 7 ing member or manager has complied with the provisions of this section
 8 respecting the form and manner of making demand for obtaining or ex-
 9 amining of such information, and (2) that the information the demanding
 10 member or manager seeks is reasonably related to the member's interest
 11 as a member or the manager's position as a manager, as the case may be.
 The district court may, in its discretion, prescribe any limitations or condi-
 tions with reference to the obtaining or examining of information, or
 award such other or further relief as the district court may deem just and
 proper. The district court may order books, documents and records, per-
 tinent extracts therefrom, or duly authenticated copies thereof, to be
 brought within the state of Kansas and kept in the state of Kansas upon
 such terms and conditions as the order may prescribe.

15 (g) Failure to maintain books and records shall not be grounds for
 16 personal liability of any member or manager.

17 Sec. 30. An operating agreement may provide that:

18 (a) A member who fails to perform in accordance with, or to comply
 19 with the terms and conditions of, the operating agreement shall be subject
 20 to specified penalties or specified consequences; and

21 (b) at the time or upon the happening of events specified in the op-
 22 erating agreement, a member shall be subject to specified penalties or
 23 specified consequences.

24 Sec. 31. A person may be named or designated as a manager of the
 25 limited liability company as provided in section 2, and amendments
 26 thereto.

27 Sec. 32. (a) Unless otherwise provided in an operating agreement,
 28 the management of a limited liability company shall be vested in its mem-
 29 bers in proportion to the then current percentage or other interest of
 30 members in the profits of the limited liability company owned by all of
 31 the members, the decision of members owning more than 50% of the
 32 percentage or other interest in the profits controlling; provided however,
 33 that if an operating agreement provides for the management, in whole or
 34 in part, of a limited liability company by a manager, the management of
 35 the limited liability company, to the extent so provided, shall be vested
 36 in the manager who shall be chosen by the members in the manner pro-
 37 vided in the operating agreement. The manager shall also hold the offices
 38 and have the responsibilities accorded to the manager by the members
 39 and set forth in an operating agreement. Subject to section 44, and
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 43

Sec. 30 Comments: The Kansas Act relies upon common law concepts of breach of contract to provide the LLC and its Members a remedy for the breach of a Member. The Delaware Act authorizes the Members to insert forfeiture and other penalties in the LLC operating agreement and permits their enforcement. This provision eliminates the uncertainty surrounding enforcement of contractual penalties in an LLC.

Sec. 31 Comments: The Kansas Act does not define a Manager, and requires that the Manger be "chosen by the Members" in the manner proscribed by the articles or operating agreement. As a technical matter, a Manager may not be designated specifically in the agreement. The Delaware Act permits the initial Manager to be designated in the documents or by Member action.

Sec. 32 Comments: Each Act permits the Members to agree to a management scheme and permits the appointment of one or more managers. In the absence of an agreement, the Kansas Act defaults to the general partnership model, i.e. per capita, (apparently) unanimous voting. The Delaware Act defaults to majority voting by economic interest in profits. Existing K.S.A. 17-7614 (c) and (d) have been included here as (b) and (c).

Section 32(b) modifies Delaware law to provide that a LLC with managers

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1 amendments thereto, a manager shall cease to be a manager as provided
 2 in an operating agreement. A limited liability company may have more
 3 than one manager. Unless otherwise provided in an operating agreement,
 4 each member in a member managed LLC has the authority to bind the
 5 limited liability company, and each manager, in a manager managed LLC
 6 has the authority to bind the LLC.

7 (b) If the articles of organization provide that management of the
 8 limited liability company is vested in one or more managers: (1) No mem-
 9 ber acting solely in the member's capacity as a member, is an agent of
 10 the limited liability company; and (2) every manager is an agent of the
 11 limited liability company for the purpose of its business and affairs, and
 12 the act of any manager for apparently carrying on the usual way of the
 13 business or affairs of the limited liability of which the manager is a man-
 14 ager binds the limited liability company, unless the manager so acting has,
 15 in fact, no authority to act for the limited liability company in the partic-
 16 ular matter, and the person with whom the manager is dealing has knowl-
 17 edge of the fact that the manager has no such authority.

18 (c) An act of a member or manager which apparently is not for car-
 19 rying on the usual way of the business or affairs of the limited liability
 20 company does not bind the limited liability company unless authorized in
 21 accordance with the terms of the articles of organization or operating
 22 agreement, at the time of the transaction or at any other time. Unless
 23 otherwise provided in the articles of organization or operating agreement,
 24 a transaction not in the ordinary course of the business or affairs of the
 25 limited liability company must be approved by a majority, by number, of
 26 the members of the limited liability company.

27 Sec. 33. A manager of a limited liability company may make contri-
 28 butions to the limited liability company and share in the profits and losses
 29 of, and in distributions from, the limited liability company as a member.
 30 A person who is both a manager and a member has the rights and powers,
 and is subject to the restrictions and liabilities, of a manager and, except
 as provided in an operating agreement, also has the rights and powers,
 and is subject to the restrictions and liabilities, of a member to the extent
 of the manager's participation in the limited liability company as a
 member.

36 Sec. 34. (a) An operating agreement may provide for classes or
 37 groups of managers having such relative rights, powers and duties as the
 38 operating agreement may provide, and may make provision for the future
 39 creation in the manner provided in the operating agreement of additional
 40 classes or groups of managers having such relative rights, powers and
 41 duties as may from time to time be established, including rights, powers
 42 and duties senior to existing classes and groups of managers. An operating
 43 agreement may provide for the taking of an action, including the amend-

can limit the actual and apparent authority of its members by a statement in the articles of organization to that effect. Delaware law does not appear to eliminate the apparent authority of members to legally bind an LLC having managers.

Sec. 33 Comments: The Delaware Act provision clarifies that a Member may be a Manger.

Sec. 34 Comments: This is a new provision. The Delaware Act permits LLC's with multiple Managers to have different powers, duties, voting and economic rights. It is unclear in Kansas whether unanimous consent of managers is required to take action.

Subsection 34(e) is K.S.A. 17-7630 renumbered and restated.

1 ment of the operating agreement, without the vote or approval of any
2 manager or class or group of managers, including an action to create
3 under the provisions of the operating agreement a class or group of lim-
4 ited liability company interests that was not previously outstanding.

5 (b) An operating agreement may grant to all or certain identified
6 managers or a specified class or group of the managers the right to vote,
7 separately or with all or any class or group of managers or members, on
8 any matter. Voting by managers may be on a per capita, number, financial
9 interest, class, group or any other basis. Unless otherwise provided in the
10 operating agreement, if more than one manager is appointed, all man-
11 agers shall have an equal vote per capita.

12 (c) An operating agreement which grants a right to vote may set forth
13 provisions relating to notice of the time, place or purpose of any meeting
14 at which any matter is to be voted on by any manager or class or group
15 of managers, waiver of any such notice, action by consent without a meet-
16 ing, the establishment of a record date, quorum requirements, voting in
17 person or by proxy, or any other matter with respect to the exercise of
18 any such right to vote.

19 (d) Unless otherwise provided in an operating agreement, on any
20 matter that is to be voted on by managers, the managers may take such
21 action without a meeting, without prior notice and without a vote, if a
22 consent or consents in writing, setting forth the action so taken, shall be
23 signed by the managers having not less than the minimum number of
24 votes that would be necessary to authorize or take such action at a meet-
25 ing. Unless otherwise provided in an operating agreement, on any matter
26 that is to be voted on by managers, the managers may vote in person or
27 by proxy.

28 (e) When, under the provisions of the Kansas revised limited liability
29 company act or under the provisions of the articles of organization or
30 operating agreement of a limited liability company, notice is required to
31 be given to a manager of a limited liability company having a manager or
managers, a waiver in writing signed by the person or persons entitled to
the notice, whether made before or after the time for notice to be given,
is equivalent to the giving of notice.

32 Sec. 35. An operating agreement may provide that:

33 (a) A manager who fails to perform in accordance with, or to comply
34 with the terms and conditions of, the operating agreement shall be subject
35 to specified penalties or specified consequences; and

36 (b) at the time or upon the happening of events specified in the op-
37 erating agreement, a manager shall be subject to specified penalties or
38 specified consequences.

39 Sec. 36. A member or manager of a limited liability company shall
40 be fully protected in relying in good faith upon the records of the limited
41 liability company.

*Sec. 35 Comments: This is a new provision and is similar to the
Member provision on forfeitures and penalties; clarifying that forfeitures and other
penalties are permitted.*

Sec. 36, next page.

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1 liability company and upon such information, opinions, reports or state-
 2 ments presented to the limited liability company by any of its other man-
 3 agers, members, officers, employees or committees of the limited liability
 4 company, or by any other person, as to matters the member or manager
 5 reasonably believes are within such other person's professional or expert
 6 competence and who has been selected with reasonable care by or on
 7 behalf of the limited liability company, including information, opinions,
 8 reports or statements as to the value and amount of the assets, liabilities,
 9 profits or losses of the limited liability company or any other facts perti-
 10 nent to the existence and amount of assets from which distributions to
 members might properly be paid.

11 Sec. 37. Unless otherwise provided in the operating agreement, a
 12 member or manager of a limited liability company has the power and
 13 authority to delegate to one or more other persons the member's or man-
 14 ager's, as the case may be, rights and powers to manage and control the
 15 business and affairs of the limited liability company, including to delegate
 16 to agents, officers and employees of a member or manager or the limited
 17 liability company, and to delegate by a management agreement or another
 18 agreement with, or otherwise to, other persons. Unless otherwise pro-
 19 vided in the operating agreement, such delegation by a member or man-
 20 ager of a limited liability company shall not cause the member or manager
 21 to cease to be a member or manager, as the case may be, of the limited
 22 liability company.

23 Sec. 38. The contribution of a member to a limited liability company
 24 may be in cash, property or services rendered, or a promissory note or
 25 other obligation to contribute cash or property or to perform services.

26 Sec. 39. (a) Except as provided in an operating agreement, a member
 27 is obligated to a limited liability company to perform any promise to con-
 28 tribute cash or property or to perform services, even if the member is
 29 unable to perform because of death, disability or any other reason. If a
 30 member does not make the required contribution of property or services,
 the member is obligated at the option of the limited liability company to
 contribute cash equal to that portion of the agreed value (as stated in the
 records of the limited liability company) of the contribution that has not
 35 been made. The foregoing option shall be in addition to, and not in lieu
 36 of, any other rights, including the right to specific performance, that the
 37 limited liability company may have against such member under the op-
 38 erating agreement or applicable law.

39 (b) Unless otherwise provided in an operating agreement, the obli-
 40 gation of a member to make a contribution or return money or other
 41 property paid or distributed in violation of this act may be compromised
 42 only by consent of all the members. Notwithstanding the compromise, a
 43 creditor of a limited liability company who extends credit, after the en-

Sec. 36 Comments: This is a new provision. The Delaware Act creates a statutory presumption of reliability of business records and information gathered in the normal course of business operations and protects the member or manager who relies thereon from personal liability. It is very similar to the protections K.S.A. 17-6422 affords corporate directors.

Sec. 37 Comments: This is a new provision. Since the Kansas Act does not provide for officers or other agents of the manager, the liability of a manager who delegates responsibilities to an agent who fails to perform those duties is unclear.

The Delaware Act specifically permits the lawful delegation of management responsibility.

Sec. 38 Comments: K.S.A. 17-7602(i) is essentially the same.

Sec. 39 Comments: This section provides that a member is liable to the LLC for a promise to contribute cash, property, or perform services. If the member cannot perform, even because of death or disability, the LLC can collect cash equal to the value of the property or service. K.S.A. 17-7619(a) is similar but has nothing specific about the value of services. This section and K.S.A. 17-7619(c) are essentially alike in providing that a member's obligation to contribute can be compromised by unanimous consent of all members except if a creditor has extended credit in reliance upon the members obligation before there is an amendment, the creditor can enforce the obligation. However, the last two sentences of 39(b) do not have a Kansas counterpart. These sentences provide that any conditional obligation, which would include a discretionary capital call, cannot be enforced until the condition has occurred, unless satisfaction of the condition has been waived as to or by such member.

Subsection (c) is new. This provision allows the operating agreement

1 tering into of an operating agreement or an amendment thereto which,
 2 in either case, reflects the obligation, and before the amendment thereof
 3 to reflect the compromise, may enforce the original obligation to the
 4 extent that, in extending credit, the creditor reasonably relied on the
 5 obligation of a member to make a contribution or return. A conditional
 6 obligation of a member to make a contribution or return money or other
 7 property to a limited liability company may not be enforced unless the
 8 conditions of the obligation have been satisfied or waived as to or by such
 9 member. Conditional obligations include contributions payable upon a
 10 discretionary call of a limited liability company prior to the time the call
 11 occurs.

(c) An operating agreement may provide that the interest of any
 member who fails to make any contribution that the member is obligated
 to make shall be subject to specified penalties for, or specified conse-
 quences of, such failure. Such penalty or consequence may take the form
 of reducing or eliminating the defaulting member's proportionate interest
 in a limited liability company, subordinating the member's limited liability
 company interest to that of nondefaulting members, a forced sale of the
 member's limited liability company interest, forfeiture of the member's
 limited liability company interest, the lending by other members of the
 amount necessary to meet the member's commitment, a fixing of the
 value of the member's limited liability company interest by appraisal or
 by formula and redemption or sale of the member's limited liability com-
 pany interest at such value, or other penalty or consequence.

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 25 Sec. 40. The profits and losses of a limited liability company shall be
 26 allocated among the members, and among classes or groups of members,
 27 in the manner provided in an operating agreement. If the operating agree-
 28 ment does not so provide, profits and losses shall be allocated on the basis
 29 of the agreed value (as stated in the records of the limited liability com-
 30 pany) of the contributions made by each member to the extent they have
 31 been received by the limited liability company and have not been
 returned.

Sec. 41. Distributions of cash or other assets of a limited liability
 company shall be allocated among the members, and among classes or
 groups of members, in the manner provided in an operating agreement.
 If the operating agreement does not so provide, distributions shall be
 made on the basis of the agreed value (as stated in the records of the
 limited liability company) of the contributions made by each member to
 the extent they have been received by the limited liability company and
 have not been returned.

41 Sec. 42. No obligation of a member or manager of a limited liability
 42 company to the limited liability company arising under the operating
 43 agreement or a separate agreement or writing, and no note, instrument

to provide penalties or consequences if a member fails to make a required contribution. The penalties can include: reduction or elimination of the member's interest; subordination of the interest to that of others; a forced sale of the interest; forfeiture; lending by others to cover the failure; and fixing the value of the interest by appraisal or formula and redemption or sale at such value. Enforceability of such contribution agreements is currently in doubt.

Sec. 40 Comments: This section provides a default rule for allocation of profits and losses in the absence of a provision in the operating agreement. Profits and losses are to be allocated on the basis of contributions made and not returned. The Kansas rule at K.S.A. 17-7615(b) and (c) is different and provides that profits and losses will be allocated as distributions are allocated, which is equally. The Delaware default rule is believed better and is connected with other provisions of the General Act.

Sec. 41 Comments: This is a corollary to Sec. 40 and states that if not otherwise provided in the Agreement, distributions will be allocated on the basis of contributions made and not returned. Again, the Kansas rule at K.S.A. 17-7615(b) allocates distributions equally if not otherwise provided in the Agreement. This Delaware default rule is believed better and is consistent with other provisions of the General Act.

Sec. 42 Comments: This is a new provision.

1 or other writing evidencing any such obligation of a member or manager,
 2 shall be subject to the defense of usury, and no member or manager shall
 3 interpose the defense of usury with respect to any such obligation in any
 4 action.

5 Sec. 43. Except as provided in this act, to the extent and at the times
 6 or upon the happening of the events specified in an operating agreement,
 7 a member is entitled to receive from a limited liability company distri-
 8 butions before the member's resignation from the limited liability com-
 9 pany and before the dissolution and winding up thereof.

10 Sec. 44. A manager may resign as a manager of a limited liability
 11 company at the time or upon the happening of events specified in agree-
 12 ment and in accordance with the limited liability company agreement. An
 13 operating agreement may provide that a manager shall not have the right
 14 to resign as a manager of a limited liability company. Notwithstanding
 15 that an operating agreement provides that a manager does not have the
 16 right to resign as a manager of a limited liability company, a manager may
 17 resign as a manager of a limited liability company at any time by giving
 18 written notice to the members and other managers. If the resignation of
 19 a manager violates an operating agreement, in addition to any remedies
 20 otherwise available under applicable law, a limited liability company may
 21 recover from the resigning manager damages for breach of the operating
 22 agreement and offset the damages against the amount otherwise distri-
 23 butable to the resigning manager.

24 Sec. 45. A member may resign from a limited liability company only
 25 at the time or upon the happening of events specified in agreement and
 26 in accordance with the operating agreement. Notwithstanding anything
 27 to the contrary under applicable law, unless the operating agreement
 28 provides otherwise, a member may resign from a limited liability company
 29 prior to the dissolution and winding up of the limited liability company.
 30 Upon resignation the member shall be deemed to be an assignee and
 31 shall have only the rights of an assignee. The resigned member is not
 32 released from the member's liability, if any, to a limited liability company.
 33 Notwithstanding anything to the contrary under applicable law, the oper-
 34 ating agreement may provide that a limited liability company interest
 35 may not be assigned prior to the dissolution and winding up of the limited
 36 liability company.

37 Sec. 46. Except as provided in this act, upon resignation any resign-
 38 ing member is entitled to receive any distribution to which the member
 39 is entitled under the operating agreement. If not otherwise provided in
 40 the operating agreement, the resigning member is not entitled to receive
 41 the fair value of the member's limited liability company interest until the
 42 dissolution and winding up of the limited liability company. All distribu-
 43 tions to a resigned member shall be subject to the provisions of sections

Sec. 43 Comments: K.S.A. 17-7615(a) is to the same effect, although not as specific.

Sec. 44 Comments: This is a new provision. This section permits the operating agreement to provide whether or not a manager has a right to resign. If the agreement says a manager cannot resign, he or she may anyway, but is liable for damage for breach of the agreement, and the damages can be offset against any amount otherwise distributable to the manager.

Sec. 45 Comments: Kansas has no reference to "resignation" of a member although K.S.A. 17-7616(b)(2)(A) now prohibits a member from demanding a return of his "contribution to capital" until dissolution. This restriction applies to LLC's formed after July 1, 1997. Delaware law prevents a member from demanding payment of his interest before dissolution by prohibiting a "resignation" prior to dissolution, and specifying that a resignation does not cause the LLC to be dissolved.

The recommended language departs from both the Kansas and Delaware law in that it permits a member to resign as a member before dissolution. Upon resignation, the member becomes an assignee with only the rights of an assignee. The resigned member continues to have liability to the LLC for promises to make contributions. The resigned member is not entitled to receive a distribution of his interest until dissolution unless the operating agreement provides otherwise. There may be several reasons a member might wish to "resign" as a member: disagreement with LLC policy or direction; fear of possible personal liability for member managed actions; lack of interest; or inability to actually participate.

47, 48 and 49, and amendments thereto.

Sec. 47. Except as provided in an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company. Except as provided in the operating agreement, a member may be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed is equal to a percentage of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

Sec. 48. Subject to sections 49 and 58, and amendments thereto, and unless otherwise provided in an operating agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

Sec. 49. (a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution violates subsection (a) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) of this section, and who did not know at the time of the distribution that the distribution violated subsection (a) of this section, shall not be liable for the amount of the distribution. Subject to subsection (c) of this section, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of distribution.

(c) Unless otherwise agreed, a member who receives a distribution

Sec. 45, cont.

The last sentence of Sec. 45 provides that an operating agreement may prohibit the assignment of an LLC interest prior to dissolution. 701 through 705 deal more thoroughly with assignment. Kansas law dealing with transferability of member's interests are found at K.S.A. 17-7618. While that section does not directly say the agreement can prohibit assignment, it states that an interest can be transferred as provided in the agreement; apparently an assignment could be prohibited until dissolution.

Sec. 46 Comments: Under Kansas law, a member may not have his "capital" returned until dissolution. Kansas law speaks of receiving the members "contribution in capital". Sec. 46 refers to receipt of the fair value of the member's "interest". Sec. 46 provides that if the operating agreement does not provide otherwise, a member is entitled to receive the fair value of the member's interest as of the date of his or her resignation. However, under Sec. 45, the default provision states that the member cannot resign prior to dissolution. Sec. 55(b) makes it clear that resignation (among other events) does not cause the LLC to be dissolved.

Sec. 47 Comments: This section is the same as K.S.A. 17-7615(b) and 17-7616(a)(3) and (b)(3).

Sec. 48 Comments: This provision is new and clarifies the LLC's liability for certain distributions.

Sec. 49 Comments: Subsection 49(a) and K.S.A. 17-7616(a)(1)(A) are similar.

Subsection 49(b) provides that if a member receives a distribution when the liabilities exceed the assets and the member knows that is the situation, the member is liable to the LLC for the distribution. If there was no knowledge, there is no liability. The Kansas provisions at K.S.A. 17-7619(d) and (e) are somewhat different. A member is liable for one year if the member "rightfully" receives the contribution back but creditors were unpaid. The member is liable for three years for a distribution when liabilities exceeded assets. Thus under the Revised Act, the member who "did not know" has no payback liability, while a "rightful" member in Kansas would be liable for at least one year. The revised provision is similar to the corporate policy regarding dividends at K.S.A. 17-6424.

Section 49(c) provides that unless otherwise agreed, a member has no liability to the LLC for a distribution after three years unless a lawsuit is started before the expiration of the three years. It is consistent with Kansas law K.S.A. 17-7619(e).

1 from a limited liability company shall have no liability under this act or
 2 other applicable law for the amount of the distribution after the expiration
 3 of three years from the date of the distribution unless an action to recover
 4 the distribution from such member is commenced prior to the expiration
 5 of such three-year period and an adjudication of liability against such
 6 member is made in the action.

7 Sec. 50. A limited liability company interest is personal property. A
 8 member has no interest in specific limited liability company property.

9 Sec. 51. (a) A limited liability company interest is assignable in whole
 10 or in part except as provided in an operating agreement. The assignee of
 a member's limited liability company interest shall have no right to partic-
 ipate in the management of the business and affairs of a limited liability
 company except as provided in an operating agreement and upon:

15 (1) The approval of all of the members of the limited liability com-
 16 pany other than the member assigning the member's limited liability com-
 17 pany interest; or

18 (2) compliance with any procedure provided for in the operating
 19 agreement.

20 (b) Unless otherwise provided in an operating agreement:

21 (1) An assignment of a limited liability company interest does not
 22 entitle the assignee to become or to exercise any rights or powers of a
 23 member;

24 (2) an assignment of a limited liability company interest entitles the
 25 assignee to share in such profits and losses, to receive such distribution
 26 or distributions, and to receive such allocation of income, gain, loss, de-
 27 duction, or credit or similar item to which the assignor was entitled, to
 the extent assigned; and

28 (3) a member ceases to be a member and to have the power to ex-
 29 ercise any rights or powers of a member upon assignment of all of the
 30 member's limited liability company interest. Unless otherwise provided
 in an operating agreement, the pledge of, or granting of a security interest,
 lien or other encumbrance in or against, any or all of the limited liability
 company interest of a member shall not cause the member to cease to
 be a member or to have the power to exercise any rights or powers of a
 35 member.

36 (c) An operating agreement may provide that a member's interest in
 37 a limited liability company may be evidenced by a certificate of limited
 38 liability company interest issued by the limited liability company.

39 (d) Unless otherwise provided in an operating agreement and except
 40 to the extent assumed by agreement, until an assignee of a limited liability
 41 company interest becomes a member, the assignee shall have no liability
 42 as a member solely as a result of the assignment.

43 (e) Unless otherwise provided in the operating agreement, a limited

Sec. 50 Comments: The Kansas and Revised Act are essentially the same.

Sec 51 Comments: Subsection (a), (b)(1), and (b)2 are similar to K.S.A. 17-7618, except that Kansas uses a majority standard for approving assignments, while subsection (a)(1) requires all members to approve admissions of new members in the absence of a different operating agreement provision. The balance of the statute has no comparable Kansas provision. Section (f) has been added to make clear the voting rights of an assignee of a single member LLC.

1 liability company may acquire, by purchase, redemption or otherwise, any
 2 limited liability company interest or other interest of a member or man-
 3 ager in the limited liability company. Unless otherwise provided in the
 4 operating agreement, any such interest so acquired by the limited liability
 5 company shall be deemed canceled.

6 (f) If the assignor of a limited liability company interest is the only
 7 member of the limited liability company at the time of the assignment,
 8 the assignee shall have the right to participate in the management of the
 9 business and affairs of the limited liability company as a member.

10 Sec. 52. On application to a court of competent jurisdiction by any
 11 judgment creditor of a member, the court may charge the limited liability
 company interest of the member with payment of the unsatisfied amount
 of the judgment with interest. To the extent so charged, the judgment
 creditor has only the rights of an assignee of the limited liability company
 15 interest. This act does not deprive any member of the benefit of any
 16 exemption laws applicable to the member's limited liability company in-
 17 terest. The rights provided by this section to the judgment creditor shall
 18 be the sole and exclusive remedy of a judgment creditor with respect to
 19 the member's limited liability company interest.

20 Sec. 53. (a) An assignee of a limited liability company interest may
 21 become a member as provided in an operating agreement and upon:

22 (1) The approval of all of the members of the limited liability com-
 23 pany other than the member assigning the member's limited liability com-
 24 pany interest; or

25 (2) compliance with any procedure provided for in the operating
 26 agreement.

27 (b) An assignee who has become a member has, to the extent as-
 28 signed, the rights and powers, and is subject to the restrictions and lia-
 29 bilities, of a member under an operating agreement and this act. Not-
 30 withstanding the foregoing, unless otherwise provided in an operating
 31 agreement, an assignee who becomes a member is liable for the obliga-
 tions of the assignee's assignor to make contributions as provided in sec-
 tion 39, and amendments thereto, but shall not be liable for the obliga-
 tions of the assignee's assignor under any other provision of this act.

35 However, the assignee is not obligated for liabilities, including the obli-
 36 gations of the assignee's assignor to make contributions as provided in
 37 section 39, and amendments thereto, unknown to the assignee at the time
 38 the assignee became a member and which could not be ascertained from
 39 an operating agreement.

40 (c) Whether or not an assignee of a limited liability company interest
 41 becomes a member, the assignor is not released from the assignor's lia-
 42 bility to a limited liability company under any other provision of this act.

Sec. 52 Comments: This section is new. This statute is intended to mirror the limited partnership charging order statute. Oklahoma's legislature added a provision providing that the charging order is the exclusive remedy of the creditor with respect to the member's limited liability company interest, which is recommended to clarify any uncertainty.

Sec. 53 Comments: Section 53(a) is partially covered by K.S.A. 17-7618 but Kansas has no provision comparable to the balance of the statute.

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0 Sec. 54. If a member who is an individual dies or a court of com-
 1 petent jurisdiction adjudges the member to be incompetent to manage
 2 the member's person or property, the member's personal representative
 3 shall have all of the rights of an assignee of the member's interest, unless
 4 the deceased or incompetent member is the only member of the limited
 5 liability company, in which case the member's personal representative
 6 shall have the right to participate in the management of the business and
 7 the affairs of the limited liability company as a member.

8 Sec. 55. (a) A limited liability company is dissolved and its affairs shall
 9 be wound up upon the first to occur of the following:

(1) At the time specified in an operating agreement, but if no such
 time is set forth in the operating agreement, then the limited liability
 company shall have a perpetual existence;

(2) upon the happening of events specified in an operating
 agreement;

(3) unless otherwise provided in an operating agreement, upon the
 written consent of the members of the limited liability company; or, if
 there is more than one class or group of members, then by each class or
 group of members, in either case, by 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 of the members or by the members
 in each class or group, as appropriate;

(4) at any time there are no members, provided that, unless otherwise
 provided in an operating agreement, the limited liability company is not
 dissolved and is not required to be wound up if, within 90 days or such
 other period as is provided for in the operating agreement after the oc-
 currence of the event that terminated the continued membership of the
 last remaining member, the personal representative of the last remaining
 member agrees in writing to continue the limited liability company and
 to the admission of the personal representative of such member or the
 personal representative's nominee or designee to the limited liability com-
 pany as a member, effective as of the occurrence of the event that ter-
 minated the continued membership of the last remaining member; or

(5) the entry of a decree of judicial dissolution under section 56, and
 amendments thereto.

(b) Unless otherwise provided in an operating agreement, the death,
 retirement, expulsion, bankruptcy or dissolution of any member or the
 occurrence of any other event that terminates the continued membership
 of any member shall not cause the limited liability company to be dis-
 solved or its affairs to be wound up, and upon the occurrence of any such
 event, the limited liability company shall be continued without dissolu-
 tion, unless within 90 days following the occurrence of any such event,
 the remaining members of the limited liability company or, if there is
 more than one class or group of members, then the remaining members

*Sec. 54 Comments: This section adopts the changes to the Delaware statute
 adopted by the Oklahoma legislature, and clarifies the rights of a personal
 representative in a single member LLC.*

*Sec. 55 Comments: K.S.A. 17-7607(a)(2) provides that the articles of
 organization of a limited liability company shall set forth: ... (b) the period of its
 duration or, the latest date upon which the limited liability company is to dissolve.
 Accordingly, current Kansas law does not provide for perpetual existence as does
 the Delaware statute in section 18-801(a)(1).*

*Del. 18-801(a)(3) is similar to K.S.A. 17-7622(a)(5) except that it contains
 language dealing with series concept permitted by Delaware law.*

*Del. 18-801(a)(4) is similar to K.S.A. 17-7622(a)(3) except that the
 Delaware section has a special provision that permits the legal representative of the
 last member to elect to continue the business of the limited liability company upon
 the death of the last remaining member. Because K.S.A. 17-17-7605 has only
 recently (in 1997) been amended to permit single member LLCs, this provision
 appears to be desirable because there is no counterpart under Kansas law for
 dealing with this situation in a single member LLC.*

*Del. 18-801(a)(5) references judicial dissolution provisions of 18-802,
 discussed below. The corresponding provision for judicial dissolution in Kansas is
 K.S.A. 17-7629, which is also discussed below.*

*Kansas law, K.S.A. 17-1622(b), is similar (this was the language that was
 amended in 1997, amendment based on Delaware code language) except that
 Delaware provisions use phrase "in either case, by members who own more than
 fifty percent" while Kansas law uses phrase "in either case, by a majority in interest
 of the members."*

1 in each class or group of members, in either case, by members who own
 2 more than 50% of the then-current percentage or other interest in the
 3 profits of the limited liability company owned by all of the members or
 4 by the members in each class or group, as appropriate, agree in writing
 5 to dissolve the limited liability company.

6 Sec. 56. (a) A limited liability company may be dissolved involuntarily
 7 by order of the district court for the county in which the registered office
 8 of the limited liability company is located in an action filed by the attorney
 9 general when it is established that the limited liability company:

- 10 (1) Has procured its articles of organization through fraud;
- 11 (2) has exceeded the authority conferred upon it by law;
- (3) has committed a violation of any provision of law whereby it has
 forfeited its articles of organization;
- (4) has carried on, conducted or transacted its business in a persist-
 15 ently fraudulent or illegal manner; or
- 16 (5) by the abuse of its powers contrary to the public policy of the
 17 state, has become liable to be dissolved.

18 (b) If the business of the limited liability company is suffering or is
 19 threatened with irreparable injury because the members of a limited li-
 20 ability company, or the managers of a limited liability company having
 21 more than one manager, are so deadlocked respecting the management
 22 of the affairs of the limited liability company that the requisite vote for
 23 action cannot be obtained and the members are unable to terminate such
 24 deadlock, then any member or members in the aggregate owning at least
 25 25% of the outstanding interests in either capital or profits and losses in
 26 the limited liability company may file with the district court a petition
 27 stating that such member or members desire to dissolve the limited li-
 28 ability company and to dispose of the assets thereof in accordance with a
 29 plan to be agreed upon by the members or as determined by the district
 30 court in the absence of such agreement. Such petition shall have attached
 31 thereto a copy of a proposed plan of dissolution and distribution and a
 certificate stating that copies of such petition and plan have been trans-
 mitted in writing to all of the other members of the limited liability com-
 pany at least 30 days before the filing of the petition and that the members
 35 having the requisite vote required to cause dissolution under the oper-
 36 ating agreement have failed or refused to consent to such plan. Unless a
 37 majority in interest of the members (or such other number of members
 38 having the requisite vote to cause dissolution as the operating agreement
 39 may provide) file with the district court within the time period for the
 40 answer date of the petition, an answer and a certificate stating that they
 41 have agreed on either the petitioner's plan, or a modification or alternative
 42 thereof, then the district court shall order that such limited liability com-
 43 pany be dissolved, if the district court determines that such irreparable

Sec. 56 Comments: The concept in this section of involuntary dissolution is similar to the principles of K.S.A. 17-6801(d) as modified to conform to the terminology used in the Act. The provision referring to members owning 25% is intended to give this right to members owning less than a 50% interest in the limited liability company and specifically includes ownership of either capital or profits & losses.

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1 injury and deadlock exists. In any proceeding under this section, the court
2 may appoint one or more trustees or receivers with all the powers and
3 title of a trustee or receiver appointed under K.S.A. 17-6808, and amend-
4 ments thereto, to administer and wind up the limited liability company's
5 affairs and may grant such other relief as the court deems equitable.

6 Sec. 57. (a) Unless otherwise provided in the operating agreement,
7 a manager who has not wrongfully dissolved a limited liability company
8 or, if none, the members or a person approved by the members or, if
9 there is more than one class or group of members, then by each class or
10 group of members, in either case, by 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 of the members or by the members
in each class or group, as appropriate, may wind up the limited liability
company's affairs; but the district court upon cause shown, may wind up
the limited liability company's affairs upon application of any member or
15 manager, personal representative or assignee, and in connection there-
16 with, may appoint a liquidating trustee.

17 (b) Upon dissolution of a limited liability company and until the filing
18 of a certificate of dissolution as provided in section 14, and amendments
19 thereto, the persons winding up the limited liability company's affairs
20 may, in the name of, and for and on behalf of, the limited liability com-
21 pany, prosecute and defend suits, whether civil, criminal or administra-
22 tive, gradually settle and close the limited liability company's business,
23 dispose of and convey the limited liability company's property, discharge
24 or make reasonable provision for the limited liability company's liabilities,
25 and distribute to the members any remaining assets of the limited liability
26 company, all without affecting the liability of member and managers with-
27 out imposing liability on a liquidating trustee.

28 Sec. 58. (a) Upon the winding up of a limited liability company, the
29 assets shall be distributed as follows:
30

31 (1) To creditors, including members and managers who are creditors,
32 to the extent otherwise permitted by law, in satisfaction of liabilities of
33 the limited liability company (whether by payment or the making of rea-
34 sonable provision for payment thereof) other than liabilities for which
35 reasonable provision for payment has been made and liabilities for dis-
36 tributions to members and former members under section 43 or 46, and
37 amendments thereto;

38 (2) unless otherwise provided in an operating agreement, to members
39 and former members in satisfaction of liabilities for distributions under
40 section 46, and amendments thereto;

41 (3) unless otherwise provided in an operating agreement, to members
42 first for the return of their contributions and second respecting their
43 limited liability company interests, in the proportions in which the mem-

*Sec. 57 Comments: Kansas law does not reference the term "winding up."
Instead, K.S.A. 17-7622(c) requires that upon the occurrence of any the events that
are listed in K.S.A. 17-7622(a), that the limited liability company is to file a
statement of intent to dissolve with the Kansas Secretary of State's office. K.S.A. 17-
7624 then requires the limited liability company to go through a winding up process,
with notice and distribution to creditors as set forth in K.S.A. 17-7624(b) and (c).
The Secretary of State's office would prefer to eliminate this two step filing
requirement, and just have a single filing of a certificate of cancellation (in Kansas
we refer to this as a certificate of dissolution), which would be consistent with
Delaware law. Sec. 57(a) is not intended to change the definition of a majority in
interest but to clarify that only continuing members vote and the majority of
interests is only the then current members.*

*It should be noted that 18-804(a)(3) provides an ordering rule that states
that distributions shall first be made for the return of their contributions and second
respecting their limited liability company interests. This does not appear to be
consistent with Internal Revenue Code 704(c) requirements that require liquidating
distributions to be made in accordance with members' capital account balances. I
also do not like the term "contributions" because the members contributions may
have previously been returned to such member through distributions made by the
limited liability company.*

Sec. 58 Comments: This provision is similar in concept to K.S.A. 17-7625.

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1 bers share in distributions.
 2 (b) A limited liability company which has dissolved shall pay or make
 3 reasonable provision to pay all claims and obligations, including all con-
 4 tingent, conditional or unmatured claims and obligations, known to the
 5 limited liability company and all claims and obligations which are known
 6 to the limited liability company but for which the identity of the claimant
 7 is unknown. If there are sufficient assets, such claims and obligations shall
 8 be paid in full and any such provision for payment made shall be made
 9 in full. If there are insufficient assets, such claims and obligations shall
 10 be paid or provided for according to their priority and, among claims and
 11 obligations of equal priority, ratably to the extent of assets available there-
 for. Unless otherwise provided in an operating agreement, any remaining
 assets shall be distributed as provided in this act. Any liquidating trustee
 winding up a limited liability company's affairs who has complied with
 this section shall not be personally liable to the claimants of the dissolved
 limited liability company by reasons of such person's actions in winding
 up the limited liability company.

15 Sec. 59. (a) Subject to the constitution of the state of Kansas:
 16 (1) The laws of the state, territory, possession, or other jurisdiction
 17 or country under which a foreign limited liability company is organized
 18 to govern its organization and internal affairs and the liability of its mem-
 19 bers and managers; and
 20 (2) A foreign limited liability company may not be denied registration
 21 by reason of any difference between those laws and the laws of the state
 22 of Kansas.

23 (b) A foreign limited liability company shall be subject to section 7,
 24 and amendments thereto.

25 Sec. 60. Before doing business in the state of Kansas, a foreign lim-
 26 ited liability company shall register with the secretary of state. In order
 27 to register, a foreign limited liability company shall submit to the secretary
 28 of state, together with payment of the fee required by this act, an original
 29 copy executed by a member or manager, together with a duplicate copy,
 30 of an application for registration as a foreign limited liability company,
 31 setting forth:

- 32 (a) The name of the foreign limited liability company;
- 33 (b) the state or other jurisdiction or country where organized, the
 34 date of its organization and a statement issued by an appropriate authority
 35 in that jurisdiction that the foreign limited liability company exists in good
 36 standing under the laws of the jurisdiction of its organization;
- 37 (c) the nature of the business or purposes to be conducted or pro-
 38 moted in the state of Kansas;
- 39 (d) the address of the registered office and the name and address of
 40 the resident agent for service of process required to be maintained by
 41

Sec. 59 Comments: The legislature has previously adopted the Delaware Foreign LLC statutes in materially all respects, and consequently, the statutes are essentially identical, except for subpart (b) of the Delaware statute, which is included, to clarify that in Kansas a foreign LLC may conduct any activity permitted by statute for domestic LLC's, subject only to its own charter documents.

Sec 60 Comments: The legislature has previously adopted the Delaware Foreign LLC statutes in materially all respects, and consequently, the statutes are essentially identical, except for subpart (b) of the Delaware statute, which is included, to clarify that in Kansas a person shall not be deemed to be doing business in the State of Kansas solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

1 this act;
 2 (e) an irrevocable written consent of the foreign limited liability com-
 3 pany that actions may be commenced against it in the proper court of
 4 any county where there is proper venue by the service of process on the
 5 secretary of state as provided for in K.S.A. 60-304, and amendments
 6 thereto, and stipulating and agreeing that such service shall be taken and
 7 held, in all courts, to be as valid and binding as if due service had been
 8 made upon the general partners of the foreign limited liability company;
 9 (f) the name and business, residence or mailing address of each of
 10 the members or, if managed by managers, the name and business, resi-
 dence or mailing address of each of the managers; and
 (g) the date on which the foreign limited liability company first did,
 or intends to do, business in the state of Kansas.

15 A person shall not be deemed to be doing business in the state of
 16 Kansas solely by reason of being a member or manager of a domestic
 17 limited liability company or a foreign limited liability company.

18 Sec. 61. (a) If the secretary of state finds that an application for reg-
 19 istration conforms to law and all requisite fees have been paid, the sec-
 20 retary of state shall:

21 (1) Certify that the application has been filed in the secretary of
 22 state's office by endorsing upon the original application the word "filed"
 23 and the date and hour of the filing, and the endorsement is conclusive of
 24 the date and time of its filing in the absence of actual fraud; and

25 (2) file and index the endorsed application.

26 (b) The duplicate of the application, similarly certified, shall be re-
 27 turned to the person who filed the application or that person's
 28 representative.

29 Sec. 62. (a) The secretary of state shall not issue a registration to a
 30 foreign limited liability company unless the name of such limited liability
 31 company is such as to distinguish it upon the records of the office of the
 32 secretary of state from the names of other limited liability companies,
 33 corporations or limited partnerships organized under the laws of this state
 34 or reserved or registered as a foreign limited liability company, foreign
 35 corporation or foreign limited partnership under the laws of this state,
 36 except that a foreign limited liability company may register under a name
 37 which is not such as to distinguish it upon the records of the office of the
 38 secretary of state from the name of other limited liability companies,
 39 corporations or limited partnerships organized under the laws of this state
 40 or reserved or registered as a foreign limited liability company, foreign
 41 corporation or foreign limited partnership under the laws of this state if:

42 (1) Written consent is obtained from the other limited liability com-
 43 pany, corporation or limited partnership and filed with the secretary of
 state; or

*Sec. 61 Comments: Sections 61 and 62 are conformed to take into account
 current Kansas Secretary of State procedures.*

Sec. 62 Comments: This is K.S.A. 17-7639 renumbered. See above.

1 (2) it indicates as a means of identification and in its advertising within
 2 this state, the state in which the limited liability company was formed,
 3 and the application sets forth this condition.

4 (b) Each foreign limited liability company shall have and maintain in
 5 the state of Kansas:

6 (1) A registered office which may but need not be its place of business
 7 in the state of Kansas; and

8 (2) a resident agent for service of process on the limited liability com-
 9 pany, which agent may be either an individual resident of the state of
 10 Kansas whose business office is identical with the limited liability com-
 11 pany's registered office or a domestic corporation.

12 (c) A resident agent may change the address of the registered office
 13 of the foreign limited liability companies for which the resident agent is
 14 resident agent to another address in the state of Kansas by (1) paying the
 15 fee required by this act; (2) filing with the secretary of state a certificate
 16 in duplicate, executed by the resident agent, setting forth the names of
 17 all the foreign limited liability companies represented by the resident
 18 agent and the address at which the resident agent has maintained the
 19 registered office for each of such foreign limited liability companies; and
 20 (3) certifying to the new address to which each such registered office will
 21 be changed on a given day and at which the resident agent will thereafter
 22 maintain the registered office for each of the foreign limited liability com-
 23 panies recited in the certificate. Upon the filing of the certificate, the
 24 Secretary of state shall furnish to the resident agent a certified copy of
 25 such certificate. Thereafter, or until further change of address, as au-
 26 thorized by law, the registered office in the state of Kansas of each of the
 27 foreign limited liability companies recited in the certificate shall be lo-
 28 cated at the new address of the resident agent of the company given in
 29 the certificate. Filing of the certificate shall be considered an amendment
 30 of the application of each foreign limited liability company affected by
 31 the certificate, and the foreign limited liability company shall not be re-
 32 quired to take any further action with respect thereto, to amend its ap-
 33 plication. Any resident agent filing a certificate under this section, upon
 34 such filing, shall deliver promptly a copy of such certificate to each foreign
 35 limited liability company affected thereby. The resident agent shall fur-
 36 nish the secretary of state one additional copy of the certificate for each
 37 limited liability company affected.

38 (d) The resident agent of one or more foreign limited liability com-
 39 panies may resign and appoint a successor resident agent by paying the
 40 fee required by this act and filing a certificate in duplicate with the sec-
 41 retary of state, stating that the resident agent resigns as resident agent
 42 for the foreign limited liability company identified in the certificate and
 43 giving the name and address of the successor resident agent. There shall

1 be attached to the certificate a statement executed by each affected for-
2 eign limited liability company ratifying and approving the change of res-
3 ident agent. Upon the filing, the successor resident agent shall become
4 the resident agent of those foreign limited liability companies that have
5 ratified and approved the substitution and the successor resident agent's
6 address, as stated in the certificate, shall become the address of each such
7 foreign limited liability company's registered office in the state of Kansas.
8 Filing of the certificate of resignation shall be deemed to be an amend-
9 ment of the application of each foreign limited liability company affected
10 by the certificate, and the foreign limited liability company shall not be
required to take any further action with respect thereto, to amend its
application. The resident agent shall furnish the secretary of state one
additional copy of the certificate for each limited liability company
affected.

15 (e) The resident agent of one or more foreign limited liability com-
16 panies may resign without appointing a successor resident agent by paying
17 the fee required by this act and filing a certificate in duplicate with the
18 secretary of state stating that the resident agent resigns as resident agent
19 for the foreign limited liability companies identified in the certificate, but
20 the resignation shall not become effective until 60 days after the certifi-
21 cate is filed. There shall be attached to the certificate an affidavit that, at
22 least 30 days prior to the date of the filing of the certificate, notice that
23 the resignation of the resident agent was sent by certified or registered
24 mail to each foreign limited liability company for which the resident agent
25 is resigning as resident agent. The affidavit shall be sworn to by the res-
26 ident agent, if an individual, or the president, a vice-president or the
27 secretary of the resident agent, if a corporation. The affidavit shall state
28 that the notice was sent to the principal office of each of the foreign
29 limited liability companies within or outside the state of Kansas, if known
30 to the resident agent or, if not, to the last known address of the attorney
or other individual at whose request the resident agent was appointed for
the foreign limited liability company. After receipt of the notice of the
resignation of its resident agent, the foreign limited liability company for
which the resident agent was acting shall obtain and designate a new
resident agent, to take the place of the resident agent resigning. If a
foreign limited liability company fails to obtain and designate a new res-
ident agent within 60 days after the filing by the resident agent of the
certificate of resignation, that foreign limited liability company shall not
be permitted to do business in the state of Kansas and its registration
shall be considered canceled.

41 Sec. 63. If any statement in the application for registration of a for-
42 eign limited liability company was false when made or any arrangements
43 or other facts described have changed, making the application inaccurate

Sec. 63 Comments: This is K.S.A. 17-7640 renumbered.

1 in any respect, the foreign limited liability company shall file promptly
2 with the secretary of state a certificate, executed by an authorized person,
3 correcting the statement, together with the fee required by this act.

4 Sec. 64. A foreign limited liability company may cancel its registra-
5 tion by filing with the secretary of state a certificate of cancellation exe-
6 cuted by the members, together with the fee required by this act and the
7 annual report and franchise tax for any tax period which has ended. A
8 cancellation does not terminate the authority of the secretary of state to
9 accept service of process on the foreign limited liability company with
10 respect to causes of action arising out of the doing of business in the state
11 of Kansas.

Sec. 64 Comments: This is K.S.A. 17-7641 renumbered.

12 Sec. 65. (a) A foreign limited liability company doing business in the
13 state of Kansas may not maintain any action, suit or proceeding in the
14 state of Kansas until it has registered in this state and has paid to the state
15 all fees and penalties for the years, or parts thereof, during which it did
16 business in the state without having registered.

Sec. 65 Comments: This is K.S.A. 17-7642 renumbered.

17 (b) The failure of a foreign limited liability company to register in the
18 state of Kansas does not:

- 19 (1) Impair the validity of any contract or act of the foreign limited
- 20 liability company;
- 21 (2) impair the right of any other party to the contract to maintain any
- 22 action, suit or proceeding on the contract; or
- 23 (3) prevent the foreign limited liability company from defending any
- 24 action, suit or proceeding in any court of the state of Kansas.

25 (c) A member of a foreign limited liability company is not personally
26 liable for the foreign limited liability company solely by reason of the
27 limited liability company's having done business in the state of Kansas
28 without registration.

29 Sec. 66. The district court shall have jurisdiction to enjoin any fore-
30 eign limited liability company, or any agent of a foreign limited liability
31 company, from doing any business in the state of Kansas if the foreign
limited liability company has failed to register under this act. The attorney
general, upon the attorney general's own motion or upon the relation of
proper parties, shall proceed for this purpose by petition in any county
in which the foreign limited liability company is doing or has done
business.

Sec. 66 Comments: This is K.S.A. 17-7643 renumbered.

32 Sec. 67. Subsection (c) of section 15, and amendments thereto, shall
33 be applicable to foreign limited liability companies as if they were do-
34 mestic limited liability companies.

Sec. 67 Comments: This is a new section, and provides the same execution standards for foreign LLC's as required for Kansas LLC's.

35 Sec. 68. Service of process in any action against any foreign limited
36 liability company, whether or not that limited liability company is quali-
37 fied to do business in this state, shall be made in the manner prescribed
38 by K.S.A. 60- 304, and amendments thereto. Any person who has a cause
39
40
41
42
43

Sec. 68 Comments: This is K.S.A. 17-7644 renumbered.

1 of action against any foreign limited liability company, whether or not the
 2 limited liability company is qualified to do business in this state may file
 3 suit against the limited liability company in the district court of a county
 4 in which there is proper venue if the cause of action arose in Kansas out
 5 of the limited liability company's doing business in Kansas or while the
 6 limited liability company was doing business in Kansas.

7 Sec. 69. A member may bring an action in the district court in the
 8 right of a limited liability company to recover a judgment in its favor if
 9 managers or members with authority to do so have refused to bring the
 10 action or if an effort to cause those managers or members to bring the
 action is not likely to succeed.

Sec. 70. In a derivative action, the plaintiff must be a member at the
 time of bringing the action and:

11 (a) At the time of the transaction of which the member complains;
 12 or

13 (b) the member's status as a member had devolved upon the member
 14 by operation of law or pursuant to the terms of an operating agreement
 15 from a person who was a member at the time of the transaction.

16 Sec. 71. In a derivative action, the petition shall set forth with par-
 17 ticularity the effort, if any, of the plaintiff to secure initiation of the action
 18 by a manager or member or the reasons for not making the effort.

19 Sec. 72. If a derivative action is successful, in whole or in part, as a
 20 result of a judgment, compromise or settlement of any such action, the
 21 district court may award the plaintiff reasonable expenses, including rea-
 22 sonable attorney fees, from any recovery in any such action or from a
 23 limited liability company.

24 Sec. 73. (a) The rule that statutes in derogation of the common law
 25 are to be strictly construed shall have no application to this act.

26 (b) It is the policy of this act to give the maximum effect to the prin-
 27 ciple of freedom of contract and to the enforceability of operating
 28 agreements.

29 (c) To the extent that, at law or in equity, a member or manager or
 30 other person has duties (including fiduciary duties) and liabilities relating
 thereto to a limited liability company or to another member or manager:

31 (1) Any such member or manager or other person acting under an
 32 operating agreement shall not be liable to the limited liability company
 33 or to any such other member or manager for the member's or manager's
 34 or other person's good faith reliance on the provisions of the operating
 35 agreement; and

36 (2) The member's or manager's or other person's duties and liabilities
 37 may be expanded or restricted by provisions in an operating agreement.

38 Sec. 74. In any case not provided for in this act, the rules of law and
 39 equity, including the law merchant, shall govern.

*Sec. 69 Comments: This is a new provision and is similar to principles that
 apply to corporations.*

*Sec. 70 Comments: This is a new provision and believed useful in
 connection with Section 69.*

*Sec. 71 Comments: This is a new provision and believed useful in connection
 with Section 69.*

*Sec. 72 Comments: This is a new provision and believed useful in
 connection with Section 69.*

*Sec. 73 Comments: This is a new provision and is recommended for
 the protection for members and managers who act in good faith reliance on the
 provisions of the limited liability company operating agreement.*

Sec. 74 Comments: This is a new provision.

5-43

1 Sec. 75. (a) The secretary of state shall charge each domestic and
2 foreign limited liability company the following fees:

3 (1) A fee of \$20 for issuing or filing and indexing any of the following
4 documents:

- 5 (A) A certificate of amendment of articles of organization;
- 6 (B) a restated articles of organization;
- 7 (C) a certificate of cancellation;
- 8 (D) a certificate of change of location of registered office or resident
9 agent;

- 10 (E) a certificate of merger, consolidation or conversion; and
- 11 (F) any certificate, affidavit, agreement or any other paper provided
for in this act, for which no different fee is specifically prescribed;

12 (2) a fee of \$7.50 for each certified copy plus a fee per page, if the
13 secretary of state supplies the copies, in an amount fixed by the secretary
14 of state and approved by the director of accounts and reports for copies
15 of corporate documents under K.S.A. 45-204, and amendments thereto;

16 (3) a fee of \$7.50 for each certificate of good standing and certificate
17 of fact issued by the secretary of state;

18 (4) a fee of \$5 for a report of record search, but furnishing the fol-
19 lowing information shall not be considered a record search and no charge
20 shall be made therefor: Name of the limited liability company and the
21 address of its registered office; name and address of the resident agent;
22 the state of the limited liability company's formation; the date of filing of
23 its articles of organization or annual report; and date of expiration; and

24 (5) for photocopies of instruments on file or prepared by the secretary
25 of state's office and which are not certified, a fee per page in an amount
26 fixed by the secretary of state and approved by the director of accounts
27 and reports for copies of corporate documents under K.S.A. 45-204, and
28 amendments thereto.

29 (b) Every limited liability company hereafter formed in this state shall
30 pay to the secretary of state, at the time of filing its articles of organization,
31 an application and recording fee of \$150.

32 (c) At the time of filing its application to do business, every foreign
33 limited liability company shall pay to the secretary of state an application
34 and recording fee of \$150.

35 Sec. 76. All provisions of this act may be amended from time to time
36 or repealed and all rights of members and managers are subject to this
37 reservation.

38 Sec. 77. For purposes of any tax imposed by the state of Kansas or
39 any instrumentality, agency or political subdivision of the state of Kansas,
40 a limited liability company formed under this act or qualified to do busi-
41 ness in the state of Kansas as a foreign limited liability company shall be
42 classified as a partnership unless classified otherwise for federal income
43

*Sec. 75 Comments: This is K.S.A. 17-7646 renumbered and modified
to reflect other changes in the Revised Act.*

*Sec. 76 Comments: This is a new provision. This provision is believed
useful and recommend its adoption.*

*Sec. 77 Comments: This section is new. Kansas law may not be
completely clear on the question of the tax treatment of LLCs. The statute says that
the federal income tax treatment controls.*

5-14-14

1 tax purposes, in which case the limited liability company shall be classified
 2 in the same manner as it is classified for federal income tax purposes. For
 3 purposes of any tax imposed by the state of Kansas or any instrumentality,
 4 agency or political subdivision of the state of Kansas, a member or an
 5 assignee of a member of a limited liability company formed under this
 6 act or qualified to do business in the state of Kansas as a foreign limited
 7 liability company shall be treated as either a resident or nonresident part-
 8 ner unless classified otherwise for federal income tax purposes, in which
 9 case the member or assignee of a member shall have the same status as
 10 such member or assignee of a member has for federal income tax
 purposes.

15 Sec. 78. (a) Every limited liability company organized under the laws
 16 of this state shall make an annual report in writing to the secretary of
 17 state, stating the prescribed information concerning the limited liability
 18 company at the close of business on the last day of its tax period next
 19 preceding the date of filing. If the limited liability company's tax period
 20 is other than the calendar year, it shall give notice of its different tax
 21 period in writing to the secretary of state prior to December 31 of the
 22 year it commences the different tax period. The annual report shall be
 23 filed at the time prescribed by law for filing the limited liability company's
 24 annual Kansas income tax return. If the limited liability company applies
 25 for an extension of time for filing its annual income tax return under the
 26 internal revenue code, the limited liability company shall also apply, not
 27 more than 90 days after the due date of its annual report, to the secretary
 28 of state for an extension of the time for filing its report and an extension
 29 shall be granted for a period of time corresponding to that granted under
 30 the internal revenue code. The application shall include a copy of the
 application to income tax authorities. 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 in-
 come **or for a one-member LLC taxed as a sole proprietorship, the net book value of
 LLC as calculated on an income tax basis;** and

35 (3) a list of the members owning at least 5% of the capital of the
 36 company, with the post office address of each.

37 (b) Every foreign limited liability company shall make an annual re-
 38 port in writing to the secretary of state, stating the prescribed information
 39 concerning the limited liability company at the close of business on the
 40 last day of its tax period next preceding the date of filing. If the limited
 41 liability company's tax period is other than the calendar year, it shall give
 42 notice in writing of its different tax period to the secretary of state prior
 43 to December 31 of the year it commences the different tax period. The

*Sec. 78 Comments: This section combines current K.S.A. 17-7647, 17-7648,
 17-7649, and 17-7655 governing annual reports for domestic and foreign LLCs,
 along with forfeiture and reinstatement procedures.*

*The amendment in this section is our proposal to address the issue of the sole
 proprietorship LLC -- the single person LLC -- and how they determine and submit their
 annual report, and the cost of the annual report (the tax). This was inadvertently left out of
 the original document.*

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

These Proposed KBA amendments are explained on the previous page.

- (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 **or for a one-member LLC taxed as a sole proprietorship, the net book value of the LLC as calculated on an income tax basis.**

(c) The annual report required by this section 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, **or for a one-member LLC taxed as a sole proprietorship, \$1 for each \$1,000 of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the preceding taxable year,** except that no annual tax

shall be less than \$20 or more than \$2,500.

(d) 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 articles of organization of any domestic limited liability company or 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 articles of organization of a domestic limited liability company or the authority of any foreign limited liability company are forfeited for failure to file an annual report or to pay the required franchise tax, the domestic limited liability company or the authority of a 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.

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1 (e) When reinstatement is effective, it relates back to and takes effect
 2 as of the effective date of the forfeiture and the company may resume its
 3 business as if the forfeiture had never occurred.

4 (f) No limited liability company shall be required to file its first annual
 5 report under this act, or pay any annual franchise tax required to accom-
 6 pany such report, unless such limited liability company has filed its articles
 7 of organization or application for authority at least six months prior to the
 8 last day of its tax period. If any limited liability company files with the
 9 secretary of state a notice of change in its tax period and the next annual
 10 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
 15 of which is 12, except that the tax shall not be less than \$20.

16 Sec. 79. From and after January 1, 2000, this act shall be applicable
 17 to all limited liability companies formed in Kansas, whether formed be-
 18 fore or after such date.

19 Sec. 80. If any provision of this act or its application to any person
 20 or circumstance is held invalid, the invalidity does not affect other pro-
 21 visions or applications of the act which can be given effect without the
 22 invalid provision or application. To this end, the provisions of this act are
 23 severable.

24 Sec. 81. K.S.A. 17-7601, 17-7602, 17-7603, 17-7606, 17-7609, 17-
 25 7610, 17-7611, 17-7612, 17-7613, 17-7614, 17-7615, 17-7617, 17-7618,
 26 17-7619, 17-7620, 17-7621, 17-7623, 17-7624, 17-7625, 17-7626, 17-
 27 7627, 17-7628, 17-7629, 17-7630, 17-7631, 17-7632, 17-7633, 17-7635,
 28 17-7636, 17-7637, 17-7638, 17-7639, 17-7640, 17-7641, 17-7642, 17-
 29 7643, 17-7644, 17-7645, 17-7646, 17-7649, 17-7650, 17-7652, 17-7653,
 30 17-7655 and 17-7656 and K.S.A. 1998 Supp. 17-7604, 17-7605, 17-7607,
 17-7608, 17-7616, 17-7622, 17-7634, 17-7647, 17-7648 and 17-7654 are
 hereby repealed.

Sec. 82. This act shall take effect and be in force from and after
 January 1, 2000, and its publication in the statute book.

Sec. 79 Comments: This section provides for a future effective date. The above text is recommended so that the Act will provide a transition period to become familiar with the act. It does not follow the effective date provision adopted in Section 68 of the Kansas Revised Uniform Partnership Act enacted in 1998 which provides an additional transition period for existing partnerships.

Sec. 80 is a severability clause and Sec. 81 is a repealer section.

The purpose of the delayed effective date is covered in the explanation of Sec. 79, above.

Representative Mike O'Neal, Chairman
House Judiciary Committee
Room 313 south
State Capital Building

Chairman O'Neal and Committee Members,

Thank you for the opportunity to speak to you this afternoon. On behalf of the Law Enforcement Training Commission, it's my pleasure to present to you testimony on a Bill that we feel is critical to the continuity of Law Enforcement across Kansas.

- HB 2278 is the result, of an extensive study conducted by a sub committee of the Training Commission and staff of the Kansas Law Enforcement Training Center.
- 425 agencies surveyed, 341 responded (80%)
- 76% of the respondents support legislation that requires Reserve Officer training and certification.
- Kansas Peace Officers Association, Kansas Sheriff's Association and the Kansas Association of Chiefs of Police, all support HB 2278.
- Kansas Law Enforcement Training Center (KLETC) supports this legislation, and will absorb the fiscal note associated with its passage.
- Kansas Law Enforcement Training Commission held a public hearing on June 10, 1998, in Hutchinson. Letters were sent to every law enforcement agency in the state, five agencies attended and participated in the hearing.
- The executive summary of the Commission survey will provide data, which supports this legislation.
- Legislation includes:

Grandfathering of incumbent reserve officers serving on July 1st, 1999. And with your approval, a technical amendment to the bill, requiring mandatory registration of those reserve officers being grandfathered with KLETC no later than December 31, 1999.

Annual 16 hour continuing education requirement

Training can be done at the local level in conjunction with the eighty-hour part time basic training curriculum established by KLETC.

Eliminates the confusion in classification terminology by combining Part time and Reserve Officers together under the part time classification.

In closing, there are over 1000 reserve officers at work in Kansas today. They perform the same duties as their full and part time counterparts. Yet, nothing in the law requires reserve officers to receive basic training or annual rectification. This job is too complex, and the stakes are too high, to place officers "on the streets" without training.

Thank you very much for your time.

Respectfully submitted,

Jim Daily, Kansas Law Enforcement Training Commission member.

State of Kansas
Law Enforcement Training Commission
P.O. Box 632
Hutchinson, Ks. 67504-0632

**EXECUTIVE SUMMARY
OF
A "RESERVE OFFICER SURVEY"**

CONDUCTED BY
THE KANSAS LAW ENFORCEMENT TRAINING CENTER
for
THE KANSAS LAW ENFORCEMENT TRAINING COMMISSION

In 1997, a Kansas Law Enforcement Training Commission sub-committee studying "reserve" law enforcement officer issues asked Kansas Law Enforcement Training Center staff to conduct a survey examining those issues. *Of 425 agencies to which the surveys were sent, 341—or 80%—responded.* Generally, the survey sought data concerning *reserve officers* and *auxiliary officers* as those terms are defined by the *Kansas Law Enforcement Training Act*; specifically, it solicited responses, and comments, to these questions:

- *Does your agency have reserve officers? [If so, how many?]*
- *Does your agency have part-time officers? [If so, how many?]*
- *In your opinion, should reserve officers be required to be certified by the state?*
- *Do you provide formal basic training for your reserve officers?*
- *If formal basic training was mandated for reserve officers, who should be required to provide that training? Local agencies, at the local level in a KLETC-approved program? KLETC—at facilities near Yoder, Kansas?*
- *If formal basic training was mandated for reserve officers and a grandfather clause was included that exempted reserve officers who were active with an agency on the effective date of the mandate, how many reserve officers would your agency need trained annually, on an average?*
- *What duties do your reserve officers perform?*

This Executive Summary summarizes survey results and is based solely upon the data submitted by survey respondents; 215 of 289 (74%) recognized municipal police agencies, 91 of 104 (88%) of Kansas sheriffs' departments/offices, and 35 (100%) of "other law enforcement agencies" responded.

I. DATA SUMMARY

NUMBERS OF RESERVE OFFICERS

RESERVE OFFICERS: There appear to be at least 1,246* reserve officers in Kansas.

- *45% of responding agencies have reserve officers (152)
55% do not. (189)*
- *There are at least 1,101 reserve officers, an average of 7.24 per reporting agency. This represents 14% of Kansas officers; there are 6,539 full-time, and 435 part-time, officers in Kansas.*

** 20 responding agencies with reserve officers failed to indicate how many they had. If the 7.24 average held constant, the estimated number of reserve officers would be at least 1,246.*

- *42% of responding city police agencies (90 of 215) have reserve officers.
58% do not. (125)*

There are at least 444 city police reserve officers, an average of 4.93 per reporting agency. (14 responding agencies with reserve officers failed to indicate how many they had. If the 4.93 average held constant, the estimated number of city reserve officers would be at least 513.

- *65% of responding sheriffs (59 of 91) have reserve officers.
35% do not. (32)*

There are at least 642 sheriffs' reserve officers, an average of 10.88 per reporting agency. (6 responding agencies with reserve officers failed to indicate how many they had. If the 10.88 average held constant, the estimated number of county reserve officers would be at least 707.

- *9% of responding other agencies (3 of 35) have reserve officers.
91% do not. (32)*

There are at least 15 other agency reserve officers, an average of 5 per agency..

RESERVE OFFICER TRAINING

PRESENT TRAINING: 61% of respondents provide basic training to their RO.

143 respondents provide this training; 39% (90 of 233) do not.

KLETC questions the validity of this response area. It is difficult to believe that almost 40% of agencies with reserve officers do not provide those officers with some form of basic training. It is possible that many of those agencies misinterpreted the question, believing that it addressed the issue of structured, academy-type training, as opposed to periodic classroom training and OJT.

- *58% of responding city police agencies (85 of 147) provide this training. 42%—62 of 147—do not.*
- *74% of responding sheriffs (56 of 76) provide this training. 26%—20 of 76—do not.*
- *20% of responding other agencies (2 of 10) provide this training. 80%—8 of 10—do not.*

The 143 respondents providing basic reserve officer training were asked, as part of the same query, to indicate how many hours of basic training they provided. Unfortunately, many replies suggested a wide-ranging misinterpretation of the question. As the attached full report indicates, many respondents' answers covered firearms training only; one stated they gave no training, as RO are supervised by full-time officers; many provided no hour total, answering with statements such as "varies," "continuing," "as many as possible," "do 200 hours of ride-along time and attend all reserve training classes," "all have graduated from KLETC," "no set hours," and "sporadic." Thus, it is impossible to establish a valid average number of basic training hours; however, a popular response indicated that many agencies provide at least 80 hours of training following the KLETC Part-Time Officer Basic Training Curriculum. Several agencies provide longer training, ranging from the low 100s to as many as 500.

CERTIFICATION: *76% of respondents believe RO should be state-certified.*

250 of 331 respondents support state certification; 24% (81) do not.

- *76% of responding city police agencies (159 of 209) support state RO certification. 24%—50 of 209—do not.*
- *67% of responding sheriffs (59 of 88) support state RO certification. 33%—29 of 88—do not.*
- *94% of responding other agencies (32 of 34) support state RO certification. 6%—2 of 34—do not.*

MANDATED TRAINING SOURCE:

The majority of respondents believe any mandated RO training should be conducted at the local level.

- *71% of respondents (229 of 323) believe that, if RO basic training were mandated, local agencies should provide such training through KLETC-approved programs.*
- *29% of respondents (94 of 323) believe that, if RO basic training were mandated, KLETC should provide such training at its Yoder facility.*

Note: 4% of respondents (13 of 341) gave other answers. Those answers were not included in these results.

- *70% of responding city police agencies (145 of 207) prefer local, but KLETC-approved, training.
31%–64 of 207–prefer KLETC-based training.*
- *72% of responding sheriffs (61 of 85) prefer local, but KLETC-approved, training.
31%–24 of 85–prefer KLETC-based training.*
- *74% of responding other agencies (23 of 31) prefer local, but KLETC-approved, training.
26%–8 of 31–prefer KLETC-based training.*

PROJECTED ANNUAL RESERVE OFFICER TRAINING REQUIREMENTS

Respondents indicated that, assuming present reserve officers would be exempt (or “grandfathered”) from mandated RO basic training, between 479 and 534 reserve officers statewide would ANNUALLY require basic training, as follows:

263–297 city reserve officers
209–229 sheriffs’ reserve officers
7–8 other agency reserve officers

II. SUBSTANTIVE SUMMARY

A significant number of Kansas law enforcement agencies utilize reserve officers. Forty-five percent of survey respondents do so, presently utilizing over 1,100 such officers, an average of 7.24 reserve officers per agency. Over 40% of city agencies, and 65% of sheriffs' agencies, use reserve officers. While reserve officer utilization is frequent and widespread, many agencies appear not to provide structured basic training to such officers. Survey results indicate that only 61% of respondents provide basic training; however, given the well-known constitutional and liability consequences of failing to provide such training to persons fulfilling law enforcement officer duties, KLETC believes, as indicated in the *Data Summary*, that many agencies may have misinterpreted, and thus "misanswered," this survey component. However, even assuming that more than 61% of respondents provide structured training, survey results indicate that it is extremely unlikely that all agencies provide basic training to their reserve officers. *Accordingly, it may be safely assumed that many untrained reserve officers presently perform the duties of law enforcement officers in Kansas.*

Not surprisingly, the majority—76%—of responding agencies believe that reserve officers should be subject to a state basic training mandate; most want, however, to satisfy such a mandate at the local level without sending their reserve officers away from home for training. Yet, the majority believe mandated training programs must be approved by KLETC. By over a 2-to-1 margin, respondents believe local agencies should be responsible for complying with a reserve officer training mandate via a KLETC-approved curriculum; clearly, most agencies want to avoid sending their reserve officers to KLETC for training.

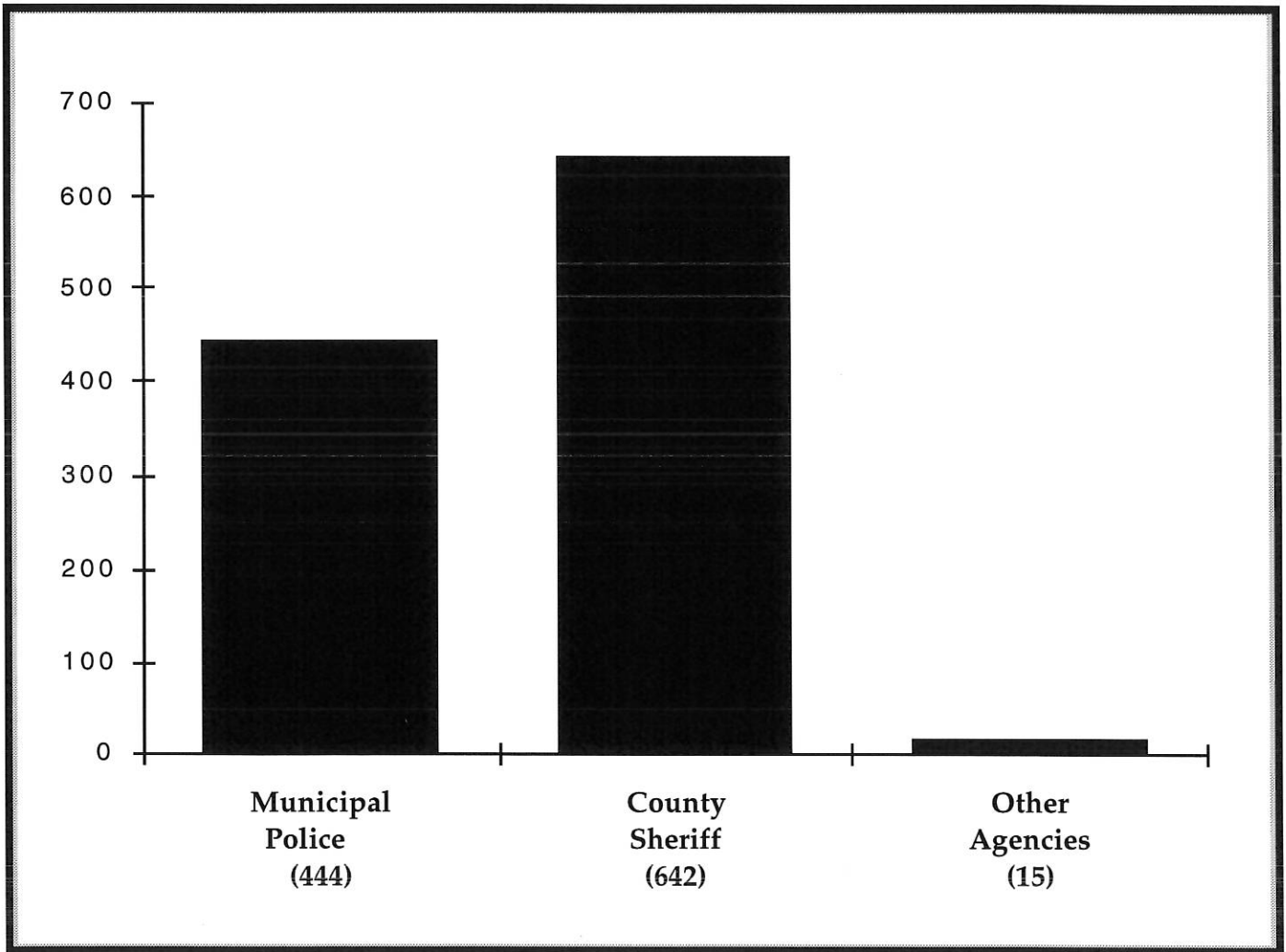
This desire to train at the local level is not surprising; response commentary strongly reflects the substantial impact that required KLETC-based training could have on reserve officer programs. Individually and collectively, comments point out that reserve officers are unpaid volunteers with other full-time jobs; requiring officers to travel to KLETC for training, even for short periods, would force many volunteers to take vacation time and forfeit family vacations. Consequently, some reserve officers may leave law enforcement.

CONCLUSION

- Reserve officers are heavily relied upon by many Kansas agencies at all levels.
- A significant number of reserve officers receive little formal basic training.
- Most Kansas agencies would support mandated reserve officer basic training and certification.
- Most agencies want KLETC to approve reserve officer basic training programs, but strongly prefer to implement and conduct those programs locally.
- Requiring reserve officers to attend KLETC would threaten many reserve programs, programs heavily relied upon by many Kansas agencies.

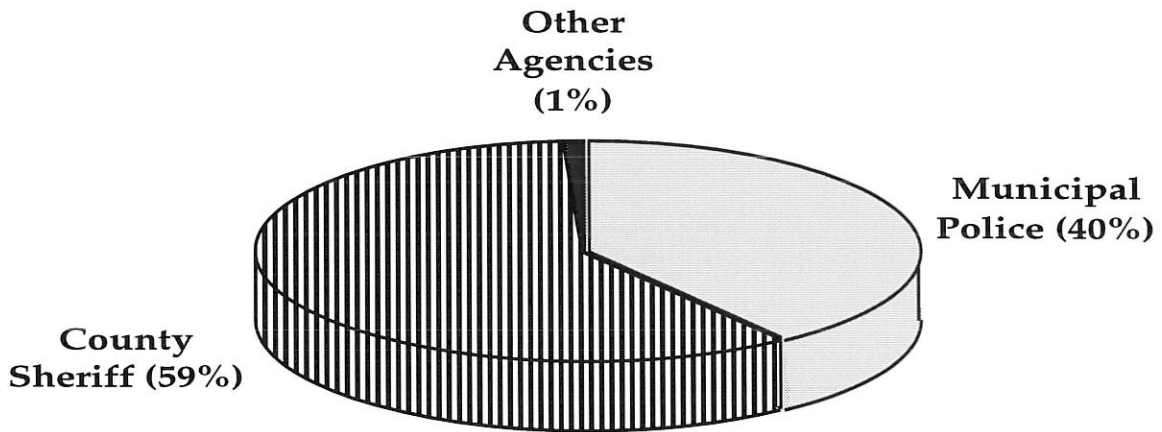
Number of Reserve Officers by Type of Agency

Based upon respondent survey



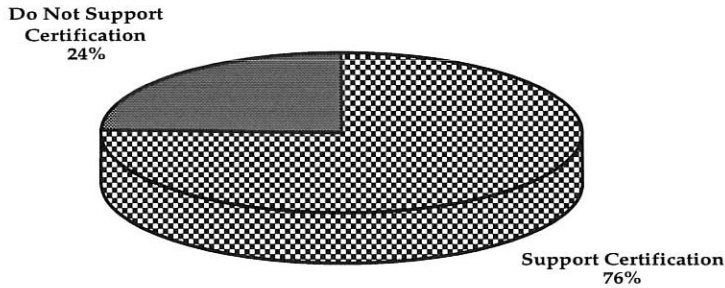
Percent of Reserve Officers by Type of Agency

Based upon respondent survey

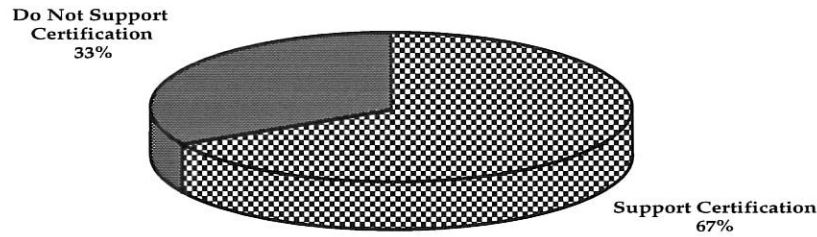


Percent of Respondents, by Type of Agency, that *Support* or *Do Not Support* Certification of Reserve Officers

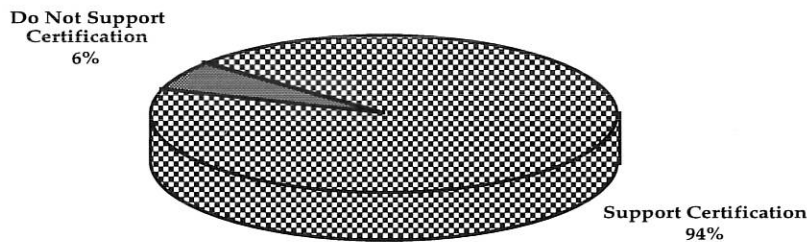
Municipal Police Agencies



County Sheriff Agencies



Other Agencies



Number of Reserve Officers Projected To Be Trained Annually

- *Subtraction of those officers to be trained at satellite academy programs already certified by KLETC.*

- *These numbers are based on survey results.*

Satellite Academy

Number reported they will train annually

Wichita Police Department	10 to 15
Lawrence Police Department	0
Topeka Police Department	10 to 15
Kansas City Police Department	10 to 15
Overland Park Police Department (JCCC Academy)	(Not reported)
Sedgwick County Sheriff's Department	<u>20 to 25</u>

Total Projected to be Trained at Satellite Academy programs already certified by KLETC 50 to 70

Total projected number to be trained annually per survey returns	479 to 534
Minus projected number to be trained at satellite academies	- <u>50 to 70</u>
Minimum and Maximum Projected	429 to 464

Minimum and Maximum Projected Number to be Trained Annually 429 to 464

KANSAS ASSOCIATION OF CHIEFS OF POLICE

RE: HOUSE BILL 2278, MANDATED BASIC AND IN-SERVICE TRAINING FOR RESERVE LAW ENFORCEMENT OFFICERS.

Currently, there are a number of reserve officers patrolling city streets, county roads, and state highways, enforcing the same laws in the same fashion as certified, trained law enforcement officers. They are being placed in situations where they risk bodily injury or death and in situations where they could cause bodily injury or death to suspects or even innocent bystanders.

Every law enforcement officer in existence risks the same possibilities. However, these possibilities can be reduced if officers receive not just training, but good training.

As a full-time law enforcement officer, I like to believe that all officers have some type of training or experience when they are responding to assist other officers or citizens in need or responding to the scene of a crime. Officers rely on their training and experience to carry them through calls and situations in order to come out of it without injury and without breaking policy or procedures. This would seem to be enough to worry about without the additional worry of looking after a person wearing the same uniform who does not have knowledge of the job other than what they may have learned while in the field. The word worry is used because that is exactly what is taking place. I personally have worried for officer's safety while in route to certain calls. Therefore, I have given assignments to those backup officers which would most likely keep them out of harms way. Officers who trust in each other should share the responsibilities. One of the most sought after phrases from one officer to another is, "I trust you." Trust comes with training and experiences that is shared by officers. While responding to a burglary in progress or domestic dispute call, officers should not have to ask each other if they have been trained to handle this type of call. Sometimes the answer is no. This just made that call more stressful for both officers involved. The trained officer doesn't feel like he now has adequate backup and the untrained officer now feels as if he or she is a burden.

This is not a job that allows for many mistakes and it certainly is not a job where the only type of training can be "learn as you go." Granted, much training is gained in the field but it should not be counted on as the only form of training. As a small agency, we cannot provide reserves with the training they need for many different types of incidents by just giving field training. Calls we receive are not that diverse in nature. They need to know how to handle the worst case scenarios. Then, they can be better prepared for the less dangerous calls. The worst case scenario just doesn't come along everyday so it cannot be counted on in the field-training environment.

From an administrative point of view, I would not feel comfortable having personnel on the streets without a minimum amount of training hours. Liability is very high in this profession without adding to it unnecessarily. Putting a person in a uniform with a badge and a firearm without proper training is unnecessary. Training can be utilized as a way to screen out those who are not willing to put forth the effort to do what it takes to

become a successful and professional law enforcement officer. If training is demanding and stressful, administrators will be able to see who can or who cannot handle the real world while in a controlled environment. Better to learn there than by learning that the untrained reserve was put to the test in the field and failed. Family members of reserve officers are very appreciative of the fact that training is being provided for their loved ones before they are given the duties of a law enforcement officer. They will not hesitate to make departments accountable for injury or death, which may occur due to the lack of training.

I personally have implemented a reserve program, which began in the summer of 1998. The reserve officers were required to complete an 80-hour training course and they continue to receive training in different aspects of law enforcement and they hunger for it. To show trained officers the areas in which they are proficient or areas in which they need help, they are required to ride with seasoned officers for a period of one-year following their 80-hours and then are evaluated before they are able to work by themselves.

Nothing but positive feedback has been received from both the reserve officers and the regular officers. The reserve officers appreciate the fact that regular officers, along with personnel from other factions of law enforcement, took the time to provide training for them. The regular officers appreciate the fact that the reserves were willing to learn the full extent of the job and that they could better count on the reserves as backup officers. Reserve training will decrease the amount of resentment regular officers may hold toward a reserve officer. I started out as a reserve officer who was receiving only field training. I was viewed as someone who should not be in the same uniform or be allowed to carry a gun. The perception was that I didn't know anything. The perception was close to correct. I didn't know what I needed to.

It is the goal of any administrator to have an outstanding department. Not an outstanding regular officer department, and an outstanding reserve officer department, but one department as a whole. The regular officer and the reserve officer serve the same purpose. Each officer, regular or reserve should view the two as the same because the public certainly views it that way. When a citizen needs assistance, they do not care if it is a regular officer or a reserve officer who arrives to help. The citizen needing the help simply wants kind, professional and knowledgeable help. Regular or reserve, the officer had better know how to handle to call.

In any job, when placed in high stress situations, people revert back to the way they were trained to accomplish a task. If officers do not have training to revert back to during a high stress situation, what are their options?

*Kurt Ford,
Chief of Police*

A study done by the Kansas Law Enforcement Training Commission concluded that 75% of the law enforcement agencies in Kansas approved mandated basic training for reserves.

House Bill 2278 would mandate an 80 hour training curriculum established by The Kansas Law Enforcement Training Center who would conduct the training which would be held at least once annually. Local agencies would be allowed to conduct their own basic training class upon demonstrating that their course will mirror that of the Kansas Law Enforcement Training Center's.

It would also create an annual 16-hour in-service training requirement, which may be satisfied with courses approved by the appointing agency and that are directly related to law enforcement.

At present, reserves who were serving prior to or on July 1, 1999, would be exempt from the 80-hour basic training rule. All officers will be subject, however to the in-service training requirements.

This House Bill also combines "part-time" officers (those paid officers employed less than 1,000 hours) and "reserve" officers (non-paid volunteers) into a single "part-time" category.



LEAGUE OF KANSAS MUNICIPALITIES

LEGAL DEPARTMENT □ 300 S.W. EIGHTH □ TOPEKA, KANSAS 66603

PHONE: (785) 354-9565 □ FAX: (785) 354-4186

To: House Judiciary Committee
From: Kim Gulley, Assistant General Counsel
Date: February 16, 1999
Re: Opposition to HB 2278

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our 529 member cities. We appear today in opposition to House Bill 2278.

Reserve police officers are a vital tool available to Kansas cities in order to augment existing law enforcement officers. In some cases, reserve officers serve as the only law enforcement available in the community. These officers are volunteers who perform a variety of tasks – everything from crossing guards to special event security to traditional law enforcement functions. House Bill 2278 would severely limit the use of these officers in all capacities.

In 1996, the League established a Reserve Officer Task Force to study and make recommendations concerning the use of reserve police officers by cities. We conducted a survey of the 270 police chiefs in the state with the following results:

- 103 departments responded
- 48 reported using reserve police officers
- 45 of those departments reported that they train those officers in a manner consistent with their responsibilities
- In many smaller communities, reserve officers are the only law enforcement available

We believe that House Bill 2278 would inhibit the use of reserve officers as follows:

- Although officers serving as of July 1, 1999 would receive certification, classification as part-time officers under the provisions of the bill would require annual continuing education. Reserve officers, most of whom maintain full-time employment elsewhere, would find it difficult to meet these requirements.
- Future reserve officers would have to meet the full training requirements of 80 hours of accredited instruction. This would be cost-prohibitive for cities and it would be unlikely that individuals with full-time jobs would be able to take time away from their primary employment to attend two weeks worth of training.

For these reasons, the League opposes state-mandated training requirements for volunteer, reserve officers. We believe that cities should be allowed to make these training decisions at the local level, based upon the use of the officers and the needs of the local community. We respectfully oppose House Bill 2278.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Testimony in Support of HB 2450 to House Judiciary Committee

February 16, 1999

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to appear in support of HB 2450, which would delete from current law the Director of the Budget's authority to review and make recommendations to the Legislature for proposed changes in the Judicial Branch budget. In effect, the bill would allow the Judicial Branch budget to be presented to the Legislature without the budget cuts traditionally made by the Division of the Budget and the Governor.

The Judicial Branch budget is the subject of strict scrutiny before its submission to the Director of the Budget. Every request made by a judicial district is justified and approved by the administrative judge for that district. These requests are then reviewed by both the Office of Judicial Administration and by the Supreme Court, who look at the requests in light of the caseload analysis and other factors for that district. This process has been described in our testimony on the Judicial Branch budget as a "painful winnowing." That is apparent from the FY 1999 budget, in which requests for 121 new FTE positions were winnowed down to the 50 positions included in the Judicial Branch budget request, and in this year's FY 2000 budget request, in which requests for 150 new FTE positions were winnowed down to 38. A similar process occurs each year, and yet these requests, which can fairly be characterized as conservative in light of the staggering caseload increases the courts experience, are cut even further by the Executive Branch.

Under the present arrangement, the Judicial Branch budget comes to the Legislature in two forms -- the budget as prepared by the Judicial Branch, and the budget as modified by the Executive Branch. It is appropriate for Executive Branch agencies to be reviewed by the Director of the Budget in the process of determining what budget requests the Executive Branch desires to make for its own operations. It is inappropriate to treat the Judicial Branch budget the same as an agency of the Executive Branch.

The 1986 report of the Judicial Council Court Unification Advisory Committee agreed in principle with the position of the Supreme Court that the Judicial Branch budget should be submitted to the Legislature without change. However, the committee's recommendation went somewhat further, suggesting that the Court's budget be submitted directly to the Legislature. That committee noted the following:

It is the unanimous opinion of the Supreme Court that Article 3, Section 1 of the Kansas Constitution confers on the Supreme Court the responsibility for general administrative authority over all the courts of the state. By reason of this constitutional provision, and inherent authority of the court, it is the responsibility of the Supreme Court to determine the financial needs of the Judicial Branch and make those needs known to the Legislature.

That committee recommended legislation that would have the Chief Justice submit the Judicial Branch budget directly to the Legislature, with a copy given to the Governor. As with HB 2450, the language requiring the Director of the Budget to make recommendations for proposed changes in the budget is deleted.

Prior to court unification, the Supreme Court did directly submit its budget to the Legislature. We are not aware of any problems that resulted from that process. Although some states have a budget process for their courts similar to the one currently found in Kansas, in some states the court's budget is submitted directly to the Legislature, and in other states the court's budget is submitted to the Governor, but the Governor has no authority to make cuts.

In summary, direct submission of the Judicial Branch budget could help to focus both legislative and judicial time and energy on the real issues present in the Judicial Branch budget, rather than focusing on cuts made by the Executive Branch.

REPORT OF JUDICIAL COUNCIL
COURT UNIFICATION ADVISORY COMMITTEE

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In April of 1984, in a communication from the House Ways and Means Subcommittee on Courts a recommendation was received which read as follows:

"1. That the Judicial Council pursue a formal study of court unification during FY 1985 that expands upon the preliminary survey of the topic done during the current fiscal year. In view of the magnitude of such a study, the subcommittee does not expect that a completed report will be ready prior to the start of the 1985 legislative session."⁸

The Senate Subcommittee on Courts concurred with the House Subcommittee's recommendation and joined in the request.

At the April 20, 1984 meeting of the Kansas Judicial Council the request of the House and Senate Subcommittee was considered and there was discussion on the scope of such a study and the possible membership of such a committee. At the June 8, 1984 meeting of the Judicial Council the requested study assign-

⁸ Appendix, vol. 1, p.

ment was referred to the Judicial Council Court Unification Advisory Committee, which was created for that purpose. The following persons were appointed to serve:

ELWAINE F. POMEROY, Chairman, Topeka, former member of the Judicial Council, former State Senator, and Chairman of the Kansas Adult Authority;

DONALD L. ALLEGRUCCI, Pittsburg, District Court Judge;

CAROL B. CHALMERS, Manhattan, member of original JSAC Committee;

ROCHELLE R. CHRONISTER, Neodesha, State Representative;

PAUL FELECIANO, JR., Wichita, State Senator;

JOHN J. GARDNER, Olathe, practicing lawyer;

HOWARD W. HARPER, Junction City, practicing lawyer;

TYLER C. LOCKETT, Topeka, former member of JSAC Committee and Justice of the Supreme Court;

LEE NUSSER, St. John, District Magistrate Judge;

RICHARD D. SHANNON, Kansas City, District Court Administrator; and

F. TIM WITSMAN, Wichita, Sedgwick County Administrator.

The Committee held its first meeting on August 10, 1984, and has met 14 times since the initial meeting.

e. Governor Changing Court's Budget Request

The Committee agrees in principle with the position of the Supreme Court⁴² that the judicial branch budget should be submitted to the legislature, without change, as it was submitted to the director of the budget by the chief justice. The Committee goes somewhat further and suggests that the court's budget be submitted directly to the legislature. The Committee recommends that K.S.A. 20-158 be amended to provide for the budget of the judicial branch to be submitted directly to the legislature. It is recognized that if K.S.A. 20-158 were interpreted differently by the executive branch that the amendments would not be necessary.

K.S.A. 20-158 relates to the preparation and submission of the budget of the judicial branch. It states that the Chief Justice is responsible for preparing the budget of the judicial branch and that the Chief Justice shall submit to the director of the budget the annual budget request for the judicial branch of state government for inclusion in the annual budget document for appropriations for the judiciary, and states that the director of the budget shall review and may make such recommendations to the legislature for proposed changes in such budget as the director deems necessary and appropriate. The Supreme Court is of the opinion that such terms as "for inclusion", "recommendations", and "proposed changes" indicate that the statute gives no authority to the executive branch to delete any item or monies from the judicial branch budget.

⁴² Letter from Chief Justice Alfred G. Schroeder to Governor John Carlin, September 25, 1985. Appendix, vol. 1, p.

The director of the budget interprets K.S.A. 20-158 to allow him to make deletions from the judicial budget and amendments to the judicial budget prior to its submission to the legislature. This approach has never been challenged.

The problem with the present interpretation of K.S.A. 20-158 is a constitutional problem. It is the unanimous opinion of the Supreme Court that article 3, section 1, of the constitution confers on the Supreme Court the responsibility for general administrative authority over all the courts of the state. By reason of this constitutional provision, and inherent authority of the court, it is the responsibility of the Supreme Court to determine the financial needs of the judicial branch and make those needs known to the legislature.

The court believes that because the budget requests of the legislative branch are not amended by the director of the budget that the judicial branch should be given like treatment for its fiscal needs.

The Committee recommends that K.S.A. 20-158 be amended to read as follows:

20-158. The chief justice of the supreme court shall be responsible for the preparation of the budget for the judicial branch of state government, with such assistance as the chief justice may require from the judicial administrator, the chief judge of the court of appeals and the administrative judge of each judicial district. Each district court and the court of appeals shall submit their budget requests to the chief justice in such form and at such time as the chief justice may require.

The chief justice shall submit to the ~~director~~ of the budget legislature the annual budget request for the judicial branch of state government ~~for-inclusion-in-the-annual-budget-document-for~~ appropriations-for-the-judiciary. A copy shall be delivered to the Governor. Such budget shall be prepared and submitted in the manner provided by K.S.A. 75-3716 and K.S.A. 1980 Supp. 75-3717. Such budget shall include the request for expenditures for retired justices and judges performing judicial services or duties under K.S.A. 20-2616 as a separate item therein. ~~The director-of-the-budget-shall~~ review and-may-make-such-recommenda-tions-to-the-legislature-for-proposed-changes-in-such-budget-as the-director-deems-necessary-and-appropriate.

REPORT

of the

Kansas Judicial Study Advisory Committee

Recommendations for Improving the Kansas Judicial System

May 1974

9-9

The Kansas Judicial Study Advisory Committee

Chairman

Edward F. Arn, Wichita

Whitley Austin, Salina
John Carlin, Smolan
Carol Chalmers, Manhattan
Ray Freman Crofoot, Cedar Point
James P. Davis, Kansas City
Ray E. Dillon, Jr., Hutchinson
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Don Matlack, Clearwater
John C. Peterson, Topeka
John F. Steineger, Jr., Kansas City
A. L. "Al" Swart, Oakley
J. C. Tillotson, Norton
Robert "Bob" Wells, Garden City

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James R. James, Topeka

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Joseph C. Jordan, Jr., Kansas City
Steven Opat, Lawrence
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Richard Shannon, Kansas City
John Woods, Denver

IV. THE FINANCING OF THE COURTS OF KANSAS

44. There should be a single budget for the unified Kansas court system.
45. The court budget should be approved by the supreme court and, as is the present practice, sent to the governor for inclusion, without amendment, in the governor's budget and forwarded by the governor to the legislature.
46. The state should finance all expenses of the unified court system except for courtrooms and other space for the district court, which should be provided by local governments. If any municipal courts continue to exist after unification, they should continue to be financed by the cities.
47. All fees, fines, and forfeitures collected by the courts, not already committed to state special funds, should pass to the state general fund. However, fines and forfeitures arising from municipal ordinances processed in the unified court system should pass to the cities, minus a service charge reflecting the cost of processing each case. Fines and forfeitures collected by municipal courts remaining in existence after trial court unification should remain with the cities.

V. THE QUALIFICATIONS, TENURE, SELECTION, COMPENSATION AND RETIREMENT OF KANSAS JUDGES AND NONJUDICIAL PERSONNEL

Judicial Personnel

Qualifications

48. Supreme court justices and court of appeals judges should be residents of Kansas, at least thirty years of age, licensed to practice law in Kansas and should have actively engaged in the practice of law as judges, attorneys or professors of law, for ten years prior to their appointment.
49. District court judges should have all the qualifications of justices of the supreme court, except that they should be residents of the district they serve and should have actively engaged in the practice of law as judges, attorneys or professors of law, for six years prior to their selection.

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Testimony of Timothy J. Chambers, Reno County Attorney
Before the Judiciary Committee
Of the Kansas House of Representatives
February 16, 1999
Concerning House Bill 2471

I appreciate the opportunity to appear before this committee. I have been Reno County Attorney since 1983 and a prosecutor since 1976. I have made prosecution my chosen profession and consider it an honor to be Reno County Attorney. I have witnessed dramatic changes in the criminal justice system over the last twenty-three years. Some changes have been positive, such as the advent of victim-witness coordinators and the protection of victims.

Other changes are not positive. The introduction of cocaine and methamphetamine into our society has led to dramatic increases in crime with gangs having become a part of our everyday lives. Sentencing guidelines have changed the philosophy of our criminal justice system from rehabilitation to retribution and punishment.

As we prepare to enter the new millennium, prosecution has to adapt to our changing world. I have long endorsed the concept of a state wide District Attorney system to guarantee professional, career prosecutors. Over the last fifteen years, I have employed fourteen assistant county attorneys. Prosecution should not be a training ground for new attorneys to gain a few years of experience before moving on to the private practice of law.

Reno County is a single county judicial district. With the exception of Cowley County, Reno County is the only single county judicial district that is not a district attorney. Reno County ranks consistently at the very bottom of counties in the State of Kansas in per capita spending for prosecution.

The 1999 budget for our office is \$324,248. 1999 budgets for Saline, Finney and Riley counties are respectively \$527,589.00, \$606,384.00 and \$598,282.00 I have no doubt that Reno County ranks below at least one hundred other counties in per capita spending for prosecution in the State of Kansas.

House Judiciary

2-16-99

Attachment 10

Testimony
House Bill 2471
Page 2

In conclusion, I am proud of the job the office of the Reno County Attorney has accomplished. I have been privileged to have dedicated assistants working for me who were and are true professionals. I am proud to have been chosen Kansas Prosecutor of the Year by the Kansas County and District Attorney's Association.

It is my belief that the people of Reno County would best be served by acknowledging the role of prosecution as a full time profession dedicated to serving the criminal justice system. By passing this proposed legislation, we can be assured that qualified professionals will seek careers in what I consider an honorable profession, prosecution.



Timothy J. Chambers
Reno County Attorney