

SESSION OF 2025

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2371

As Amended by House Committee on Judiciary

Brief*

HB 2371, as amended, would make amendments to the Revised Limited Liability Company Act (LLC Act) to specify document forms and signature and delivery options, and clarify filing fee limits; amend the Business Entity Transactions Act to modify requirements related to various certificates; and amend the Business Entity Standard Treatment Act to modify registration requirements with the Secretary of State and clarify certain provisions related to resident agent change.

The bill would make technical amendments to implement the provisions of the bill, remove definitions that are relocated in the bill, remove a prior effective date, and ensure consistency in statutory language.

Revised Limited Liability Company Act (New Sections 1, 2; Sections 3-23)

Definitions (Section 3)

The bill would define “document” and “electronic transmission” and would amend definitions for “manager,” “member,” and “operating agreement.”

Document. The bill would define “document” to mean:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

- Any tangible medium on which information is inscribed. “Document” would include handwritten, typed, printed, or similar instruments and copies of such instruments; and
- An electronic transmission.

Electronic Transmission. The bill would define “electronic transmission” to mean any form of communication not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases, including one or more distributed electronic networks or databases, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and directly reproduced in paper form by such recipient through an automated process.

Manager. The bill would amend the existing definition of “manager” to specify that it includes a manager of the limited liability company (LLC) generally and a manager associated with a series of the LLC. Unless the context otherwise requires, references in the LLC Act to a manager would be deemed to include both a general and series manager.

Member. The bill would amend the existing definition of “member” to specify that it includes a member of the LLC generally and those associated with a series of the LLC. Unless the context otherwise requires, references in the LLC Act to a member would be deemed to include both a general and series member.

Operating Agreement. Current law provides that an LLC is bound by its operating agreement, whether or not it has executed such agreement. The bill would amend the existing definition of “operating agreement” to:

- Specify that these operating agreement provisions would include any series of the LLC; and

- Specify that the term may consist of one or more agreements, instruments, or other writings, and include or incorporate one or more schedules, supplements, or other writings containing provisions as to the conduct of the business and affairs of the LLC or any related series.

Documentation, Signature, Delivery, and Receipt (New Section 1)

The bill would provide that any act or transactions governed by the LLC Act or an operating agreement of an LLC may be provided for in a document. An electronic transmission would be considered the equivalent of a written document.

The below provisions would apply solely for purposes of determining whether an act or transaction has been documented, and whether the document has been signed and delivered in accordance with the LLC Act and the operating agreement.

Signature. The bill would provide that if the LLC Act or an operating agreement require or permit a signature, such signature could be manual, facsimile, conformed, or an electronic signature. For this purpose, an electronic signature would include an electronic symbol or process that is attached to, or logistically associated with, a document, and executed or adopted by a person who has intent to execute, authenticate, or adopt the document. The bill would further specify that a person could execute a document with their signature.

Delivery. Unless otherwise provided in the operating agreement, or agreed between the sender and recipient, an electronic transmission would be considered as delivered when it enters an information processing system that was designated by the recipient for the purpose of receiving such transmissions. Such transmission would be required to be in

a form capable of being processed by such system and retrievable from the system.

Recipient designation of an information processing system would be determined by the operating agreement or from the context and surrounding circumstances, including the parties' conduct.

Receipt. Additionally, the bill would consider an electronic transmission delivered even if no person is aware of its receipt. Receipt of an electronic acknowledgment from an information processing system would be proof that such transmission was received, but would not be proof that the content of the transmission corresponds with what was received.

Uniform Electronic Transactions Act (UETA). The bill would clarify that its provisions regarding documentation, signature, delivery, and receipt would not preclude persons from conducting a transaction in accordance with the UETA, if the part or parts of the transaction governed by the LLC Act are documented, signed, and delivered in accordance with either the bill's electronic transmission provisions, or those in the LLC Act.

Exceptions. The bill would clarify that its documentation, signature, delivery, and receipt provisions would not apply to:

- A document filed with or submitted to the Secretary of State, a court, or other judicial or governmental body of the State;
- A certificate of LLC interest, except that a signature on such certificate could be manual, facsimile, or electronic; and
- An act or transaction governed by the Business Entity Standard Treatment Act.

The bill would specify that these exceptions would not create any presumption about the lawful means to document any act or transaction or the lawful means to sign or deliver such document.

Operating Agreement Restrictions. An operating agreement would only be allowed to limit the application of the signature, delivery, and receipt provisions, unless it expressly restricts one or more means of documenting an act or transaction, or of signing or delivering a document that would otherwise be permitted by the bill.

Federal Law. The bill would provide that if any provision of the LLC Act is later deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, the provisions of the LLC Act would control to the fullest extent permitted by such federal law.

Subscription (New Section 2)

The bill would specify that a subscription for an LLC interest, whether submitted in writing, electronically, or another legal method, is irrevocable to the extent contained in the subscription terms.

Void or Voidable Acts or Transactions (Section 5)

Ratification or Waiver. Under the bill, any act or transaction that could be taken by or in respect of an LLC under the LLC Act that is void or voidable when taken may be ratified.

If the act or transaction conflicts with the terms of an operating agreement, such conflict could be waived by the members, manager, or other persons who are required to give approval:

- For such act or transaction to be validly taken; or

- To amend the operating agreement in a manner that would permit the act or transaction to be validly taken, in each case at the time of such ratification or waiver.

Additionally, if the void or voidable act or transaction was the issuance or assignment of any LLC interests, such interests purportedly issued or assigned would be deemed not to have been issued or assigned for purposes of determining whether such act was ratified or waived.

Date of Act or Transaction. Any act or transaction that is ratified, or waived, would be deemed validly taken at the time of the act or transaction.

Operating Agreement Amendment Notice. The bill would require notice be given pursuant to the terms of an operating agreement. If notice is required after a ratification or waiver is effectuated, the bill would require notice be given to members, managers, or other persons who would have been entitled to notice, but who had not otherwise received notice or participated in the ratification or waiver.

Validity of a Ratification or Waiver. The bill would further specify that its ratification or waiver procedures may not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by any other means permitted by law.

Judicial Review. Under the bill, an LLC or any member, manager, or person claiming to be harmed by a ratification or waiver could file an action in district court. Upon receiving the application, the court could review an act or transaction and make a determination of its validity and the effectiveness of such ratification or waiver.

Applications for judicial review would be required to name the LLC as a party and service of process be made to the resident agent of the LLC, which would be deemed to be service to the company itself. No other party would be

required to be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver.

The court would be allowed to order further or other notice of the application be made by the LLC. The bill would provide that these notice provisions would not limit or affect the right to serve process in any other manner and that these provisions are an extension of, rather than a limit on, existing service rights of legal process upon non-residents.

Act or Omission by an Officer (Section 6)

Except as provided in the operating agreement, for any act or omission occurring after June 30, 2025, the bill would state that for indemnification purposes, the term “officer” includes an officer of the LLC who:

- Is or was the president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer, or chief accounting officer of the LLC; or
- Is or was identified in the LLC’s public filings with the U.S. Securities and Exchange Commission, because such person is or was one of the most highly compensated executive officers of the LLC.

Merger or Consolidation (Section 7)

Under current law, a domestic LLC may merge or consolidate with one or more LLCs to become a surviving or resulting LLC, per the merger or consolidation agreement. The surviving or resulting LLC is required to file a certificate of merger or consolidation with the Secretary of State. If a domestic LLC is the surviving entity, it is required to state within its certificate any amendments it desires to be made to its articles of organization.

The bill would allow the surviving domestic LLC to also amend and restate the articles of organization of the surviving entity in its entirety in the certificate. Additionally, the bill would allow such entity to make amendments to its operating agreement. Continuing law also allows a surviving entity to adopt a new operating agreement instead.

Appraisal Rights (Section 8)

Under current law, appraisal rights may be provided in an operating agreement or an agreement of merger or consolidation. The bill would provide that there are no statutory appraisal rights, unless provided in either such agreement or under a plan of division. The bill also would make amendments to include a series or division of an LLC when such entity is party to the merger or consolidation.

Division of an LLC (Section 9)

Under continuing law, a LLC may divide itself into two or more domestic LLCs. The dividing company is required to file a certificate of division with the Office of the Secretary of State.

The bill would amend provisions of the LLC Act concerning the content of such certificates to allow the dividing company to include any other information it desires. Furthermore, the bill would allow a certificate of division to be amended to change the name or business address of a division contact, or to add additional information, if desired. Such amendments would be effective upon filing with the Office of the Secretary of State. The agency would be required to accept the filing of a certificate of amendment for all division companies, provided at least one such company is in good standing at the time of filing.

Elective Amendments. Amendments to a certificate of division could be made by filing a certificate of amendment for each division company that exists as an LLC in the Office of

the Secretary of State. Such certificate of amendment would be required to include:

- The name of the dividing company, and if changed, the name of the original dividing company;
- The name of the division of the company to which the amendment relates; and
- The amendment to the certificate of division.

Required Amendment. Upon becoming aware that the name or business address of the division contact, or other information required to be in the certificate, was false when made, or that such information has changed, either the manager or member (if no manager exists) of the dividing company would be required to amend the certificate. These provisions would apply for six years following the date of division, regardless if the dividing company is a survivor or no longer exists.

Execution of Amended Certificates. Unless otherwise provided in a plan of division, or in the certificate, each certificate of amendment would be required to be executed:

- If the dividing company is a surviving company, by one or more authorized persons on behalf of the dividing company acting on behalf of the division company to which the certificate of amendment relates; and
- If the dividing company is not a surviving company or no longer exists as an LLC, by one or more authorized persons on behalf of a resulting company acting on behalf of the division company who is the subject of the certificate of amendment.

Each division company would be deemed to have consented to the execution of the certificate of amendment.

Membership in a Division Company (Section 10)

The bill would amend existing law to allow an operating agreement to name existing or new members of the LLC. Additionally, the bill would create new provisions to specify the procedure of admitting a new member of a division company. Such members could be named in an operating agreement of a division company, or in the plan of division. If an inconsistency exists, or the person is being admitted as a member of an LLC pursuant to a division in which the LLC is not a division company, the terms of the plan of division would control.

Examination of LLC Information by Members (Section 12)

Under current law, LLC members may examine certain information kept by the LLC, subject to reasonable standards. The bill would specify that such information includes books, records, and other documents. Conforming amendments would be made to reference books and other documents within the records provisions. References to written records would be replaced with paper records, which would allow the printing of an electronic record.

Additionally, the bill would state that a member's right to obtain information under the LLC Act or an operating agreement for a purpose reasonably related to their interest as a member or other stated purpose is necessary and essential to achieving that purpose.

Continuing law allows members to obtain information and allows rights to be restricted by an operating agreement. The bill would clarify that such right may include examination of a record and that such right may be expanded in an operating agreement. The bill would also state that these information provisions could not be construed to limit the ability of an LLC to expand or restrict the rights of a member or manager to obtain or examine information by any other means permitted by law.

Delegation of Rights, Powers, and Duties (Section 14)

Continuing law allows a member or manager of an LLC to delegate their rights, powers, and duties to manage and control the business and affairs of the LLC to one or more persons.

The bill would allow delegation to a committee of one or more persons and would provide that any such delegation could be made irrespective of whether the delegating person has a conflict of interest with respect to the underlying matter and reason for delegation. Persons to whom the rights, powers, and duties are being delegated would not be deemed to have the same conflict of interest as the delegating person, unless the conflict exists with that person independently.

LLC Filing Fee (Section 15)

Current law requires an application and recording fee of \$150 be paid to the Office of the Secretary of State when a LLC files its articles or organization or, if a foreign LLC, its application to do business. The bill would allow the Secretary of State to set such filing fee through rules and regulations, with a limit of \$150.

Series LLCs (Sections 16 and 17)

Continuing law allows an operating agreement to establish or designate a series of members, managers, LLC company interests, or assets. A series is formed by filing a certificate of designation with the Secretary of State. A series has the power and capacity to contract, hold title to assets, sue, and be sued in its own name.

Consolidation. The bill would further clarify that a series could conduct business and exercise the power of an LLC. Additionally, an LLC or any of its series could elect to consolidate its operations as a single taxpayer to the extent required to file consolidated tax returns and elect to be

treated as a single business for the purposes of qualification or authorization to do business in Kansas or another state. Such election would not affect liability limitations under the Act except to the extent the series has specifically accepted joint liability by contract.

Merger or Consolidation. Under continuing law, a series could merge or consolidate with one or more other series of the same LLC by filing a certificate of merger or consolidation of series with the Office of the Secretary of State. The bill would allow the certificate to be amended at a later date. Such amendments could amend and restate the certificate of designation of the surviving series in its entirety.

Voting Rights. Continuing law allows an operating agreement to deny voting rights to a member, class, or group of members of a series. The bill would allow the operating agreement to also prohibit participation in the management or governance of such series, but still confer ownership of the series to such member, class, or group of members.

Series Operating Agreement. The bill would specify that an operating agreement may impose restrictions, duties, and obligations on members of the LLC or any series of the LLC as a matter of internal governance, including, without limitation, those with regard to:

- Choice of law, forum selection, or consent to personal jurisdiction;
- Capital contributions;
- Restrictions on, or terms and conditions of, the transfer of membership interests;
- Restrictive covenants, including non-competition, non-solicitation, and confidentiality provisions;
- Fiduciary duties; and

- Restrictions, duties, or obligations to or for the benefit of the LLC, other series, or their affiliates.

Wrongful Transfer of Property. If a series wrongfully transfers property to another series or the LLC as a whole with an intent to hinder, delay, or defraud creditors of its just and lawful debts or damages, or to defraud, such transfers would be deemed void pursuant to continuing law.

Dissolution of a Series or LLC (Sections 16 and 18)

Dissolution of a Series. Under the bill, if an operating agreement provides the manner in which a dissolution of a series is to be revoked, such manner could be followed.

A series dissolution may be revoked if provided for in the LLC's operating agreement, unless:

- The LLC has dissolved and the dissolution was not revoked; or
- The LCC operating agreement prohibits revocation of a series dissolution.

If the series dissolution is revoked, the LLC would not be dissolved and its affairs not wound up, if prior to filing a certificate of cancellation, the series is continued through one of the following events:

- If the dissolution is effected by the vote or consent of the members associated with the series, or other persons whose approval is required under an operating agreement; or
- In the case of a dissolution not effectuated by a vote or consent, and which occurs either at a time specified in the operating agreement or after the occurrence of certain specified events, is stopped due to an agreement to amend the operating

agreement, or approval of members to revoke such dissolution.

If a series is dissolved by dissolution of the LLC, unless a certificate of cancellation of the series' certificate of designation has been filed in the office of the Secretary of State, or the operating agreement prohibits revocation of the dissolution of a series, the dissolution of the series would be automatically revoked upon any revocation of the dissolution of the underlying LLC.

The bill would further specify that continuing law and its amendments could not be construed to limit the revocation of dissolution of a series by other means allowed by law.

Dissolution of an LLC. Continuing law allows for dissolution of an LLC, which may be revoked in certain circumstances. The bill would add provisions to allow an operating agreement to specify persons whose vote, consent, or approval is required for a dissolution of an LLC. Such persons could vote to revoke a dissolution that would have otherwise occurred.

LLC Forfeiture or Cancellation (Section 19)

Under continuing law, a domestic LLC or a foreign LLC may forfeit their articles of incorporation or authority to do business if they fail to update records with the Secretary of State regarding their registered agent or registered office when a change occurs. An LLC could be reinstated by filing a certificate of reinstatement with the Secretary of State and paying certain fees. The bill would update references to the certificate of reinstatement to specify that it applies to an LLC.

The bill would specify that upon filing of the certificate of reinstatement, that reinstatement would also apply to each series that has not been terminated and wound up and that other privileges of being reinstated would apply to the LLC and any such series.

Statutory Public Benefit Companies (Sections 20–23)

The bill would amend and repeal law related to the formation and operation of a statutory public benefit limited liability company (SPBLLC).

Under current law, an LLC may elect to become an SPBLLC. The bill would allow an LLC to be formed as an SPBLLC. If an LLC is not formed as an SPBLLC, the bill would allow the LLC to become designated as such by the terms of its operating agreement, or by amending its operating agreement and articles of organization to comply with the bill. Under current law, certain provisions are required to be contained with an SPBLLC's articles of incorporation. The bill would make conforming amendments to require the same information be contained in its operating agreement.

In the event of an inconsistency between the operating agreement and articles of incorporation, the bill would specify that the operating agreement would control among those bound by such agreement. If a manager of the SPBLLC, or if there is no manager, any other member of such, becomes aware that the specified public benefits are inaccurately set forth in the articles of incorporation, such person shall promptly amend such articles. Any provisions of the operating agreement or articles of incorporation that are inconsistent with the provisions of the bill would not be effective to the extent of such inconsistency.

Business Entity Transactions Act (Sections 24–29)

The bill would make amendments to current law provisions related to certain certificates, including certificates of merger, certificates of interest exchange, certificates of conversion, and certificates of domestication.

Certificate of Merger. Current law requirements for certificates of merger would be amended to require a statement that the merger will be approved by each merging

entity prior to the time the merger becomes effective. Under continuing law, when a merger is effective, the surviving entity's public organic document is amended as provided in the certificate of merger. The bill would allow such certificate to amend and restate the public organic document entirely.

Certificate of Interest Exchange. Current law requirements for certificates of interest exchange would be amended to require a statement that the interest exchange will be approved by the acquired entity prior to the time the exchange becomes effective. Under continuing law, when an interest exchange is effective, the acquired entity's public organic document is amended as provided in the certificate of merger. The bill would allow such certificate to amend and restate the public organic document entirely.

Certificate of Conversion. Current law requirements for certificates of conversion would be amended to require a statement that the conversion will be approved by each converting entity prior to the time the conversion becomes effective.

Certificate of Domestication. Current law requirements for certificates of domestication would be amended to require a statement that the conversion will be approved by each converting entity prior to the time the domestication becomes effective.

Business Entity Standard Treatment Act (Sections 30–33)

Filings of Certificate. The bill would make conforming amendments to require the filing of certain documents addressed by the bill with the Office of the Secretary of State, including certificates of amendment to certificate of designation, and certificates of merger or consolidation of series.

Resident Agent—Good Standing. The bill would require any domestic entity that serves as a resident agent for a covered entity be in good standing with the State.

Resident Agent—Name Change. Continuing law provides that a merger or consolidation of the resident agent, with or into another entity who succeeds to its assets by operation of law, constitutes a change of name, which requires a records update with the Office of the Secretary of State.

Under the bill, any of the following events would also be deemed a change of name:

- The conversion of the resident agent into another person; or
- A division of the resident agent in which an identified resulting person succeeds to all of the assets and liabilities of the resident agent related to its resident agent business pursuant to a plan of division, as set forth in a certificate of division.

Resident Agent—Certificate of Resignation. Under continuing law, a resident agent for a business may resign without appointing a successor if they pay a fee, if authorized by law, and by filing a certificate of resignation with the Office of the Secretary of State. The bill would amend current law to require the resigning resident agent to provide notice of resignation to the covered entity, rather than each affected entity, at least 30 days prior to filing the certificate.

Background

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Kansas Bar Association (KBA).

House Committee on Judiciary

In the House Committee hearing, **proponent** testimony was provided by representatives of the KBA and the Office of the Secretary of State. The KBA representative stated the bill

was the product of a KBA study committee's proposal to integrate various changes that had been made in the Delaware Limited Liability Company Act, which is the model for Kansas law, allowing Kansas courts to also refer to Delaware corporation and LLC jurisprudence. The representative of the Office of the Secretary of State stated the agency specifically requested changes to corporate filing fees that are static under current law, but could be adjusted to a lower amount under the bill.

Neutral testimony was provided by representatives of the Kansas Bankers Association and the Kansas Chamber of Commerce. The Kansas Chamber conferee indicated a desire by members of the Kansas Chamber to make revisions to provisions concerning series limited LLCs within the Act. The Bankers Association conferee indicated support for the Chamber proposal, if series LLC amendments are made, because the proposal has integrated language to address concerns about series limited LLC independence and shared tax status.

No other testimony was provided.

The House Committee amended the bill to incorporate the amendments suggested by the representatives of the Kansas Chamber and the Kansas Bankers Association regarding series LLCs.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Secretary of State indicates enactment of the bill would not have a fiscal effect on agency operations.

Revised Limited Liability Company Act; documents; electronic transmission; subscription; filing fee; Secretary of State