

2023 Kansas Statutes

17-76,143. Series limited liability company. (a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers, limited liability company interests or assets. If an operating agreement so provides for the establishment or formation of one or more series, then a series may be formed by complying with this section. Any such series may have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. A series is formed by the filing of a certificate of designation in the office of the secretary of state. Other than pursuant to K.S.A. 17-76,143a, and amendments thereto, a series may not merge, convert, or consolidate pursuant to any section of the Kansas revised limited liability company act, the business entity transactions act, K.S.A. 17-78-101 et seq., and amendments thereto, or any other statute of this state.

(b) Notice of the limitation on liabilities of a series as referenced in subsection (c) shall be set forth in the articles of organization of the limited liability company. Notice in articles of organization of the limitation on liabilities of a series as referenced in subsection (c) shall be sufficient for all purposes of this subsection whether or not the limited liability company has formed any series when such notice is included in the articles of organization, and there shall be no requirement that any specific series of the limited liability company be referenced in such notice. The fact that articles of organization that contain the foregoing notice of the limitation on liabilities of a series is on file in the office of the secretary of state shall constitute notice of such limitation on liabilities of a series.

(c) Notwithstanding anything to the contrary set forth in the Kansas revised limited liability company act or under other applicable law, in the event that an operating agreement establishes or provides for the establishment of one or more series, and if to the extent the records maintained for any series account for the assets associated with such series separately from the other assets of the limited liability company, or any other series thereof, and if the operating agreement so provides, and if notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the articles of organization of the limited liability company and if the limited liability company has filed a certificate of designation for each series which is to have limited liability under this section, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such series shall be enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, and, unless otherwise provided in the operating agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither the preceding sentences nor any provision pursuant thereto in an operating agreement, articles of organization or certificate of designation shall: Restrict a series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of such series; or restrict a limited liability company from agreeing in the operating agreement or otherwise that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a series shall be enforceable against the assets of the limited liability company generally. Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational, or allocational formula or procedure, including a percentage or share of any asset or assets, or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with

such series separately from the other assets of the limited liability company, or any other series thereof. As used in the Kansas revised limited liability company act, a reference to assets of a series includes assets associated with such series, a reference to assets associated with a series includes assets of such series, a reference to members or managers of a series includes members or managers associated with such series, and a reference to members or managers associated with a series includes members or managers of such series. The following shall apply to a series:

(1) A series 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, assuming insurance risks, or banking as defined in K.S.A. 9-702, and amendments thereto. Unless otherwise provided in an operating agreement, a series shall have the power and capacity to, in its own name, contract, hold title to assets, including real, personal, and intangible property, grant liens and security interests, and sue and be sued.

(2) Except as otherwise provided by the Kansas revised limited liability company act, no member or manager of a series shall be obligated personally for any debt, obligation or liability of such series, whether arising in contract, tort or otherwise, solely by reason of being a member or acting as manager of such series.

Notwithstanding the preceding sentence, under an operating agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

(3) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of members or managers associated with such series having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with such series. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote, consent or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the operating agreement a class or group of a series of limited liability company interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

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

(5) Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, the decision of members owning more than 50% of such percentage or other interest in the profits controlling, except that if an operating agreement provides for the management of a series, in whole or in part, by a manager, the management of such series, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the operating agreement. The manager of a series shall also hold the offices and have the responsibilities accorded to the manager as set forth in an operating agreement. A series may have more than one manager. Subject to K.S.A. 17-76,105, and amendments thereto, a manager shall cease to be a manager with respect to a series as provided in an operating agreement. Except as otherwise provided in an operating agreement, any event under the Kansas revised limited liability company act or in an operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(6) Notwithstanding K.S.A. 17-76,109, and amendments thereto, but subject to subsections (c)(7) and (c)(10), and unless otherwise provided in an operating

agreement, at the time a member of a series becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to all remedies available to, a creditor of such series, with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(7) Notwithstanding K.S.A. 17-76,110(a), and amendments thereto, a limited liability company may make a distribution with respect to a series. A limited liability company shall not make a distribution with respect to a series to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their limited liability company interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series, except that the fair value of property of such series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that property exceeds that liability. For purposes of the immediately preceding sentence, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, shall be liable to the series for the amount of the distribution. A member who receives a distribution in violation of this subsection, and who did not know at the time of the distribution that the distribution violated this subsection, shall not be liable for the amount of the distribution. Subject to K.S.A. 17-76,110(c), and amendments thereto, which shall apply to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

(8) Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's limited liability company interest with respect to such series. Except as otherwise provided in an operating agreement, any event under the Kansas revised limited liability company act or an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or cause the dissolution of the series, regardless of whether such member was the last remaining member associated with such series.

(9) Subject to K.S.A. 17-76,116, and amendments thereto, except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series shall not affect the limitation on liabilities of such series provided by this subsection (c). A series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under K.S.A. 17-76,116, and amendments thereto, or otherwise upon the first to occur of the following:

- (A) At the time specified in the operating agreement;
- (B) upon the happening of events specified in the operating agreement;
- (C) unless otherwise provided in the operating agreement, upon the vote, consent or approval of members associated with such series who own 2/3 or more of the then-current percentage or other interest in the profits of such series of the limited liability company owned by all of the members associated with such series; or
- (D) the dissolution of such series under subsection (c)(11).

(10) Notwithstanding K.S.A. 17-76,118(a), and amendments thereto, unless otherwise provided in the operating agreement, a manager associated with a series who has not wrongfully dissolved such series or, if none, the members associated with such series or a person consented to or approved by the members associated with such series, in either case, by members who own more than 50% of the then-current percentage or other interest in the profits of such series owned by all of the members associated with such series, may wind up the affairs of such series, but the district court, upon cause shown, may wind up the affairs of a series upon application of any

member or manager associated with such series, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and such series, take all actions with respect to such series as are permitted under K.S.A. 17-76,118(b), and amendments thereto. The persons winding up the affairs of a series shall provide for the claims and obligations of such series and distribute the assets of such series as provided in K.S.A. 17-76,119, and amendments thereto, which section shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(11) On application by or for a member or manager associated with a series, the district court may decree dissolution of such series whenever it is not reasonably practicable to carry on the business of such series in conformity with an operating agreement.

(12) For all purposes of the laws of the state of Kansas, a series is an association, regardless of the number of members or managers, if any, of such series.

(d) In order to form a series of a limited liability company, a certificate of designation must be filed in accordance with this subsection.

(1) (A) A certificate of designation shall set forth:

- (i) The name of the limited liability company; and
- (ii) the name of the series.

(B) A certificate of designation may include any other matter that the members of such series determine to include therein.

(C) A certificate of designation properly filed with the secretary of state prior to July 1, 2020, shall be deemed to comply with the requirements of this paragraph.

(2) A certificate of designation shall be executed in accordance with K.S.A. 17-7908(b), and amendments thereto, and shall be filed in the office of the secretary of state in accordance with K.S.A. 17-7910, and amendments thereto. A certificate of designation is not an amendment to the articles of organization of the limited liability company.

(3) A certificate of designation may be amended by filing a certificate of amendment thereto in the office of the secretary of state.

(A) The certificate of amendment shall set forth:

- (i) The name of the limited liability company;
- (ii) the name of the series; and
- (iii) the amendment to the certificate of designation.

(B) A certificate of designation properly filed with the secretary of state prior to July 1, 2020, that changed a previously filed certificate of designation shall be deemed to be a certificate of amendment thereto for purposes of this paragraph.

(4) A manager of a series or, if there is no manager, then any member of a series who becomes aware that any statement in a certificate of designation filed with respect to such series was false when made, or that any matter described therein has changed making the certificate of designation false in any material respect, shall promptly amend the certificate of designation.

(5) A certificate of designation may be amended at any time for any other proper purpose.

(6) Unless otherwise provided in the Kansas revised limited liability company act or unless a later effective date or time, which shall be a date or time certain, is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the secretary of state.

(7) A certificate of designation shall be canceled upon the cancellation of the articles of organization of the limited liability company named in the certificate of designation, or upon the filing of a certificate of cancellation of the certificate of designation, or upon the future effective date or time of a certificate of cancellation of the certificate of designation, or as provided in K.S.A. 17-76,139(d), and amendments thereto, or upon the filing of a certificate of merger or consolidation if the series is not the surviving or resulting series in a merger or consolidation or upon the future effective date or time of a certificate of merger or consolidation if the series is not the surviving or resulting series in a merger or consolidation. A certificate of cancellation

of the certificate of designation may be filed at any time, and shall be filed, in the office of the secretary of state to accomplish the cancellation of a certificate of designation upon the dissolution of a series for which a certificate of designation was filed and completion of the winding up of such series.

(A) A certificate of cancellation of the certificate of designation shall set forth:

- (i) The name of the limited liability company;
- (ii) the name of the series;
- (iii) the future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective upon the filing of the certificate of cancellation; and
- (iv) any other information the person filing the certificate of cancellation of the certificate of designation determines.

(B) A certificate of designation properly filed with the secretary of state prior to July 1, 2020, that dissolved a series shall be deemed to be a certificate of cancellation thereto for purposes of this paragraph.

(8) A certificate of cancellation of the certificate of designation that is filed in the office of the secretary of state prior to the dissolution or the completion of winding up of a series may be corrected as an erroneously executed certificate of cancellation of the certificate of designation by filing with the office of the secretary of state a certificate of correction of such certificate of cancellation of the certificate of designation in accordance with K.S.A. 17-7912, and amendments thereto.

(9) The secretary of state shall not issue a certificate of good standing with respect to a series if the certificate of designation is canceled or the limited liability company has ceased to be in good standing.

(e) The name of each series as set forth in its certificate of designation:

- (1) Shall include the name of the limited liability company, including any word, abbreviation or designation required by K.S.A. 17-7920, and amendments thereto;
- (2) may contain the name of a member or manager;
- (3) must comply with the requirements of K.S.A. 17-7918, and amendments thereto, to the same extent as a covered entity; and
- (4) may contain any word permitted by K.S.A. 17-7920, and amendments thereto, and may not contain any word prohibited to be included in the name of a limited liability company under Kansas law.

(f) If a foreign limited liability company that is registered to do business in this state in accordance with K.S.A. 17-7931, and amendments thereto, is governed by an operating agreement that establishes or provides for the establishment of a series of members, managers, limited liability company interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign limited liability company. In addition, the foreign limited liability company shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

History: L. 2012, ch. 50, § 1; L. 2014, ch. 40, § 62; L. 2015, ch. 65, § 11; L. 2019, ch. 47, § 39; July 1, 2020.