STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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MEMORANDUM IN SUPPORT OF HB 2207

TO: Chairman Tim Owens and Members of the Senate Judiciary Committee

DATE: February 29, 2012

RE: Series limited liability companies

Limited liability companies ("LLC") have become the most popular form of new business entities in use today because of the corporate-like liability protections combined with the advantages of being treated like a partnership for tax purposes. The LLC structure provides for greater contractual flexibility by allowing members to contract for varying profit distribution formulas, altering voting rights among members and loosening of managerial responsibilities to reflect the overall objectives of the business entity. While the conventional LLC has been incredibly successful, there has been a growing trend among states on the forefront of corporate law to adopt statutes promoting what is known as series LLCs. Delaware was the first state to adopt a series LLC statute, but numerous states have followed including Oklahoma, Iowa, Illinois, Texas, Utah, Nevada and Wisconsin.

Series Limited Liability Company Defined

The concept of a series limited liability company ("SLLC") is to subdivide an LLC into separate classes (known as "series") having separate members, managers, interest, and business purposes. Each series is allowed to hold assets in its own name and has the ability to contract for its own debts and obligations. Additionally, the SLLC can create numerous series within the SLLC to accomplish diverse business objectives and/or hold title to real estate separately. Thus, an SLLC provides that the particular debts, liabilities, and obligations relating to a particular series is enforceable only against the assets of that particular series and not against the assets of the SLLC generally or any other series within the SLLC.

Separation of Assets

Separating assets can serve a variety of goals including aligning creditors with assets, separating "high risk" and "low risk" assets and protecting assets from judgments. This not only allows for greater managerial flexibility but also affords increased freedom and creativity for investors and owners. Rather than investing in an LLC in its entirety, one may choose to invest or even become a member in one or several of the series of the SLLC in which they may perceive as having the greatest opportunity while reducing their overall exposure to risk.

Administrative Cost Reduction

SLLCs require only one certificate of formation to be filed with the Secretary of State for all series, which is an efficient avenue to avoid the administrative difficulties associated with multiple filings for essentially the same business. The commonality among series reduces the administrative costs and burdens associated with establishing and maintaining several LLCs. This may seem relatively small when compared to other expenses but the costs can become substantial for small business owners who need to maintain separate LLCs.

Below is a comparison of estimated costs of an LLC to an SLLC in the state of Kansas for a company with ten (10) wholly owned subsidiaries. The figures include filing fees, filings service, and fictitious name. Key figures not accounted for include legal and accounting fees associated with the formation of a business entity. However, there is an expectation that legal and accounting fees associated with forming 10 LLCs will be substantially greater than forming one SLLC.

Kansas LLC	**Kansas SLLC**
Certificate of Formation = $165 10 x $165 = $1,650	Certificate of Formation = $165
Annual Report = $40 10 x $40 = $400	Annual Report = $40
Name Reservation = $20 10 x $20 = $200	Name Reservation = $20
Total Estimate = $2,250	Total Estimate = $225

Who Benefits

The SLLC is primarily intended for individuals and companies whose only alternative is a traditional LLC. Many times, these individuals and companies are forced to over-fund their LLC's with more assets than they could tolerate all being subject to the same judgment. The context in which SLLCs are currently being used range from Mutual funds to franchise businesses to real estate investments.

Benefits to Farming Industry

One example of how a SLLC could benefit a Kansas resident is in the context of farming. The farmer could establish an SLLC and place livestock, equipment, and land in separate series of the SLLC to protect each asset from any possible judgment against one of the series.

Benefits to Real Estate Industry

Assume a real estate investor owns five properties. Normally the investor has one of two options when it comes to protecting his assets. First, He could put all five properties under the same LLC but lenders tend not to prefer this since one property could wipe out the equity in one or more of the properties. His second option would be to create five individual LLCs for each of the five properties, which becomes prohibitively expensive to create and maintain. By allowing for SLLCs, the real estate investor would be able to place all five properties in a single LLC while at the same time compartmentalizing the liabilities associated with each of the properties by placing them in separate series and thereby protecting himself and his assets.

Value to the State of Kansas

The State of Kansas can utilize the attractiveness of SLLCs as a vehicle to encourage companies to set up diverse business interests by offering protections for ownership interests, operations and assets. The objective behind SLLC statutes is to offer asset protection and the ability to create several business interests operating under one business entity structure. The ultimate goal in the adoption of an SLLC statute is to promote economic growth by providing greater business opportunities by removing administrative burdens and promoting cost-saving attributes, including tax and liability advantages, to individuals starting and operating businesses in Kansas.

Series Limited Liability Companies

HB 2207

Rep. Rob Bruchman

20th District

Growth of Popularity of the LLC

- Corporate-like Liability Protections
- Partnership-like Tax Advantages
- Contractual Flexibility
  - Vary profit distribution
  - Alter voting rights
  - Loosen managerial responsibilities
  - Reflect overall objectives of business entity

Series Limited Liability Company (SLLC

- Subdivides an LLC into separate classes (known as "series")
  - Separate members, managers, interests and business purposes
  - Ability to separate assets into separate series
  - Ability to contract separately for debts and obligations
- Debts, liabilities, and obligations of one series is enforceable only against the assets of that series and not against the assets of the SLLC generally or any other series within the SLLC

Series Limited Liability Company (SLLC)

- Separation of Assets
  - Aligns creditors with specific assets
  - Separates "high risk" from "low risk"
  - Protects assets from judgments
  - Reduces overall exposure to risk
- Greater Managerial Flexibility
- Increased Freedom and Creativity from Investors and Owners

States with SLLC Legislation Enacted

- Delaware - 1996
- Illinois - 2005
- Iowa - 2005
- Nevada - 2005
- Oklahoma - 2006
- Tennessee - 2005
- Texas - 2009
- Utah - 2006

Administrative Burdens Reduced

- SLLCs require only one set of articles of organization to be filed with the Secretary of State for all series
  - Avoids difficulties associated with multiple filings
  - Reduces administrative costs associated with establishing and maintaining several LLCs
- Benefits small businesses and start-up companies trying to enter the market place

Comparison of Estimated Costs

- Table below compares administrative costs for an LLC with 10 wholly owned subsidiaries to an SLLC

Kansas LLC	Kansas SLLC
Articles of Organization = $165 10 x $165 = $1,650	Articles of Organization = $165
Annual Report = $40 10 x $40 = $400	Annual Report = $40
Name Reservation = $20 10 x $20 = $200	Name Reservation = $20
Total Estimate = $2,250	Total Estimate = $225

Chart does not include associated legal fees associated with formation and maintenance

Who Benefits from the Use of SLLCs

- SLLC primarily intended for individuals and companies whose only alternative is a traditional LLC
  - SLLC avoid "over-funding" of LLC with more assets than desired to be subject to liability
- Variety of Industries and Businesses Currently Utilizing SLLCs
  - Mutual funds
  - Franchise Businesses
  - Real Estate Investments
  - Farming Industry
  - Entrepreneurs with multiple business ideas
  - Oil and Gas
  - Complex Business Arrangements

Farming Industry

- Protect various assets to avoid possible judgments or credit liabilities by creating multiple series
  - Livestock
  - Equipment
  - Land/Real Estate
  - Products

Real Estate

- Real Estate Investors
  - Able to place each investment property in a separate series
  - Insulates each property from the liabilities of other investment properties
    - One property would not be able to wipe out the equity of other properties
  - Avoids costs and burdens associated with protecting multiple investment properties
- Companies, Investment Groups and Private Kansas Citizens can take advantage of the benefits

Real Estate SLLC Illustration

- Real Estate Investor obtains 3 separate and distinct properties
  - Apartment complex
  - Vacant land
  - Commercial property (strip mall)
- Investor forms SLLC with primary purpose to manage real estate investments and related conduct
- Creates 3 series to segregate properties and limit liability and exposure to risk associated with the operation pertaining to each asset
  - Series A to manage and operate apartment complex
  - Series B to manage the vacant lot and possible future uses
  - Series C to manage and operate commercial property

Value to the State of Kansas

- Promote economic growth though private investments and job creation
- Develop greater business opportunities for residents and non-residents
- Encourage companies to set-up diverse business interests within Kansas
- Increase overall tax base
- Improve efficiency to current marketplace