

Written Proponent

**SLOAN, EISENBARTH, GLASSMAN,
MCENTIRE & JARBOE, L.L.C.**

Arthur A. Glassman
James R. McEntire
Alan V. Johnson
Martha A. Peterson
Vernon L. Jarboe
Stephen D. Lanterman
Brian M. Jacques
Christopher W. Sook**
Sheya L. Downing
Michael S. Hopfg
Danielle N. Dovey

Of Counsel:
James Richard Bilgs
Emily A. Hartz**

Retired:
Eldon Sloan
Myron L. Uatrom
Louis F. Eisenbarth
James W. Sloan

All admitted in Kansas
*Admitted in Nebraska
**Admitted in Missouri

Topoka Office:
1000 Bank of America Tower
534 S. Kansas Avenue
Topeka, KS 66603-3458
(785) 357-8311
(785) 357-6340 (Fax)

Lawrence Office:
842 Louisiana Street
Lawrence, KS 66044
(785) 842-6311
(785) 842-6312 (Fax)

Reply to Topoka Office

February 17, 2011

Rep. Rob Bruchman
Kansas House of Representatives
House Judiciary Committee

RE: House Bill 2207, 2011 Session

Dear Rep. Bruchman:

I am the current President of the Kansas Bar Association's Section on Corporation, Business and Banking Law (the "Section"). I am writing you concerning House Bill 2207 ("HB 2207"), introduced by you in this year's session. It is my understanding that the purpose of HB 2207 is to incorporate into the Kansas Revised Limited Liability Company Act, KSA §§ 17-7662 to -76,142 (the "Kansas Act"), the so-called "series" provisions currently contained in the Delaware Limited Liability Company Act, Del. Code Ann. tit. 6, §§ 18-101 to -1109 (the "Delaware Act"), primarily in Del. Code Ann. tit. 6, § 18-215.

Given the timing with which it is being reviewed by the Legislature's committee, the Section has been unable to form an official opinion concerning HB 2207. However, I want to relay to you the consensus of several members of our Section who commonly practice in the area.

As you are aware, the Kansas Act, adopted in 1999 and effective January 1, 2000, was patterned after the Delaware Act, which continued the practice in Kansas of modeling our business entity laws with the business entity laws in Delaware begun with our corporation code. However, Kansas did not adopt the series provisions of the Delaware Act as part of the Kansas Act. There were perhaps several reasons for this omission, but the common understanding among the bar is that the series provisions were viewed as complex and there would be little demand for the feature.

Since the adoption of the Kansas Act, the corporate bar in Kansas has had greater experience with limited liability companies in general and with series limited liability companies. Many members of the bar have seen increased interest in forming limited liability companies utilizing the series feature, although that interest is growing slowly. Several practitioners in our bar have related that they have organized Delaware limited liability companies for the express purpose of taking advantage of the Delaware Act's series provisions. This growing popularity has been reflected in the growing number of states that have adopted series provisions as part

of their respective limited liability company acts. Since its adoption in Delaware, at least Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, and Utah have also adopted series provisions.

As noted, while slowly increasing, the experience of our bar has been that the demand for series limited liability companies continues to be generally low in Kansas and throughout the United States. This lack of wide utilization may be attributed to the lack of certainty with the series provisions before the courts. The limited liability and asset protection aspects of series limited liability companies (one of the main advantages promoted for their use) has not been thoroughly vetted in the courts. There also remain questions as to how series limited liability companies will be treated for tax purposes—in particular under the Internal Revenue Service's "check-the-box" regulations.

Generally, the consensus among our practitioners that have weighed in on the topic is that the adoption of the Delaware Act's series provisions as part of the Kansas Act would be beneficial. Our bar believes that the demand for series limited liability companies will continue to grow, and as the courts and governmental agencies begin to resolve the current uncertainty on their treatment, we believe that the future demand for series limited liability companies could greatly increase. Our bar believes that there is no material reason why Kansas should not be able to accommodate the current demand for series limited liability companies that would otherwise be formed in our states and retain the associated organization fees and corporate/franchise taxes. Our bar further believes that adoption now would better guard against our laws being out of position should demand greatly increase in future years.

Thank you for your kind consideration.

Respectfully,



Christopher W. Sook
Sloan, Eisenbarth, Glassman,
McEntire & Jarboe, L.L.C.
2010-2011 KBA Corporation, Business & Banking
Law Section President