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MEMORANDUM

To: Chairman Hutton and House Committee on Commerce, Labor and Economic Development

From: Charles Reimer, Asst. Revisor

Date: 4/30/2015

Subject: SB 276

SB 276 primarily harmonizes changes in Kansas law pertaining to business filing requirements with the Secretary of State as a result of the passage of amendments last year to the statutes governing limited liability companies (2014 HB 2398) and the BEST act (2014 HB 2721), which centralized statutes governing filing requirements for business organizations. There are some substantive changes or changes that might be considered substantive or are of greater note. These have been identified by the secretary of state's office as sections 14, 16, 19, 20 and 21.

The amendments made by the Senate Committee on Commerce were technical corrections.

Section 1

Pertains to amendment of articles of incorporation. Updates citations.

Section 2

Pertains to amendment of articles of incorporation. Updates citations.

Section 3 (Page 4)

Pertains to extension, renewal or reinstatement of articles of incorporation or, if a foreign corporation, authority to engage in business. Updates citations.

Section 4 (Page 8)

Pertains to formation of a limited liability company. Updates citations. Removes language pertaining to formation of a limited liability company upon filing of documents. Adds language pertaining to amendment of the articles of organization of a limited liability company and language pertaining to the requirement for limited liability companies organized as professional associations to file certificates by the professional licensing body.

Section 5. (Page 9)

Replaces language pertaining to amendment of the articles of organization of a limited liability company.

Section 6 (Page 9)

Pertains to cancellation of articles of organization of a limited liability company and the filing of a certificate of cancellation. Updates references.

Section 7 (Page 10)

Removes language pertaining to the remedy if a person required to execute articles of organization of a limited liability company fails to do so.

Section 8 (Page 10)

Pertains to integration of previously filed provisions of a limited liability companys articles of organization via restated articles of organization. Adds reference to BEST. Updates citations.

Section 9 (Page 12)

Removes language pertaining to the effective date of a certificate of merger or consolidation of a limited liability company.

Section 10 (Page 15)

Updates a citation.

Section 11 (Page 15)

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Pertains to operating agreements of a limited liability company that establish one or more designated series of members, managers or limited liability company interests with separate rights, powers or duties and business purposes. Updates citations

Section 12 (Page 18)

Pertains to reinstatement of the articles of organization of a domestic limited liability company or the authority to do business of a foreign limited liability company. Updates citations. Adds a reference to forfeiture as well as cancellation.

Section 13 (Page 20)

Pertains to filing of documents with the secretary of state. Adds language that the secretary of state shall certify that a document has been filed “if the secretary of state finds that the document conforms to law.” Adds language that persons who execute documents required to be filed by BEST are not required to show evidence of their authority as a prerequisite to filing such documents.

Section 14 (Page 21)

Permits the Secretary of State to correct the agencies own errors with regard to the filing of all business organization documents. This provision was added by 2014 HB 2398, with regard to LLCs, last year. See K.S.A. 2014 Supp. 17-7683(c).

Section 15 (Page 22)

Pertains to the power of attorney with regard to documents that are filed with the secretary of state, adding provisions pertaining to irrevocability.

Section 16 (Page 22)

Adds language that names of covered entities must be distinguishable from the names of foreign covered entities and from the names of entities whose public organic documents or foreign registration has been canceled or forfeited within the previous one year.

The latter provision serves to protect the name of an entity that has inadvertently failed to comply with a change of statute or failed to file an annual report.

Section 17

Pertains to registration of a foreign covered entity.

Section 18

Pertains to activities of a foreign covered entity that do not constitute doing business in Kansas.

Section 19 (Page 25).

Changes the requirements for the name of foreign covered entities to conform with the name requirements for covered entities at Section 16. This section also incorporates the new provision protecting the names of entities for one year that have forfeited their registration status.

Section 20 (Page 26-27)

Pertains to the change of name or address of a foreign covered entity's resident agent. This provision is designed to conform the registered agent provisions for foreign covered entities with provisions for covered entities.

Section 21 (Page 28)

This section is designed to consolidate in one statute in the BEST act the provisions providing the Attorney General with authority to enjoin foreign covered entities from doing business in Kansas for failure to register or for providing false information. The statutes providing that authority in the separate statutory sections dealing with corporations, limited partnerships and limited liability companies are repealed by this bill.

Section 22 (Page 28)

Amends a statute pertaining to limited partnerships. Pertains to amendment of a certificate of limited partnership and the requirements for doing so. Adds language that the certificate of limited partnership is amended upon filing of a certificate of amendment or judicial decree of amendment or upon a specified date and applies the requirements of a certificate of amendment to judicial decrees of amendment.

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Section 23 (Page 29)

Amen a statute pertaining to limited partnerships. Pertains to canceling a certificate of limited partnership. Adds language providing that the certificate of limited partnership is canceled upon the filing of the certificate of cancellation or a judicial decree of cancellation or upon the date specified.

