

Approved: March 30, 2012

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(Date)

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM on Thursday, January 26, 2012 in 346-S of the Capitol.

All members were present except:

Gene Suellentrop  
Mitch Holmes

Committee staff present:

Katherine McBride, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Garth Jacobson, CT Corporation  
Ryan Kriegshauser, Office of Secretary of State  
Representative Rob Bruchman  
Cheryl Reinhardt, Beal & Reinhardt LLC  
Kathy Taylor, Kansas Bankers Association

Others in attendance:

See attached list.

Chairman Kinzer noted that the second bill being heard today was also heard last year and then tabled. In researching the House rules and Mason's procedural rules, Chairman Kinzer advised the bill is no longer tabled due to the conclusion of last session. The bill is back in Judiciary Committee as though it was never tabled.

Chairman Kinzer opened the hearing on **HB 2261–Enacting the revised uniform limited liability company act** and reminded the Committee this would be the first of a two-part hearing on the bill, dealing with the filing issues today, and the substantive issues the following week.

Ryan Kriegshauser testified as neutral on **HB 2261** on behalf of the Secretary of State. Mr. Kriegshauser noted a chart had been provided with the testimony that identifies the changes being made in the current filing rules. (Attachment 1)

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**HB 2261** repeals the current Kansas Revised Limited Liability Company Act and in its place would be the Uniform Law Commission's Revised Limited Liability Company Act. There are 50 pages and 91 sections in the bill, covering the filing rules and substantive issues. The formation of the LLC is different from other companies. This bill sets the filing provisions apart. The filing structure allows entities to exist and involves the formation filings and their amendments, any intermediate filings, such as annual reports, and dissolution filings. All of these filings have associated notices, timelines, processes, forms, and other publications. **HB 2261** significantly impacts the Office of the Secretary of State by its inclusion of provisions and would necessitate changes to their computer code requiring hours of programming and testing of many of the paper and on-line forms. The bill in its current form requires increased notifications to customers, resulting in increased costs for supplies and postage. Filing costs would likely need to increase for customers both to help offset the costs and also the fees associated with the additional filings the bill allows.

Mr. Kriegshauser stated the Office of the Secretary of State is willing to work with the Revisor's Office and legislators to achieve a bill that makes substantive changes to LLCs, while keeping current filing structure intact. The Office of the Secretary of State is also prepared to make any of the filing changes required, provided the bill allows for an effective date of at least 2014, to ensure they would be able to properly accept and record filings under the new processes and procedures. Mr. Kriegshauser described three enhancements that could be made to the filing aspects of the current LLC Act dealing with foreign applications, resident agents, and reinstatements.

Garth Jacobson testified in support of **HB 2261** and advised he had been involved with the Uniform Law Commission drafting committees. Most recently, the Uniform Code Commissioners adopted the Harmonization Act, which harmonizes the LLC legislation to the other unincorporated entity acts. The drafting committee also made some technical amendments and included some improvements to the LLC filing requirements, treatment of registered agents and annual reports. These technical changes generally improved and clarified the filing requirements and procedures associated with LLC's. (Attachment 2)

Mr. Jacobson proposed three amendments to improve **HB 2261**. The first amendment would specify that no foreign LLC could do business in Kansas without first registering with the Secretary of State's office. The second amendment would permit an amendment to the foreign registration statement. The third amendment would make it clear a registered agent may change its name or address without the approval of its represented entity. Likewise, it permits the registered agent to submit one filing document to effect the changes for all entities it represents.

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Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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Chairman Kinzer asked, since the CT Corporation operates in all 50 states, whether there were other issues that have come up in other states that should be considered. Mr. Jacobson offered that, generally, each state has their own set of circumstances with their Secretary of State offices. Idaho, Iowa, Nebraska, Utah, Wyoming, and the District of Columbia have adopted the act. California and Minnesota are studying the act. The District of Columbia is using the harmonized version, and Nebraska put the three amendments into their version when they enacted it. Mr. Jacobson stated there is a business organization code the Uniform Laws Commission has adopted, which would be a very good vehicle to enable the Secretary of State to use the same set of rules. Kansas, and a handful of other states, currently are tailored after Delaware. The benefit of passing this bill would be having a uniform law that also operates in other states. It is something for businesses to consider when they want to operate in several states, and the uniformity of operating would be a favorable consideration.

With no further witnesses desiring to testify, Chairman Kinzer announced he was holding **HB 2261** in abeyance until next Thursday, when Professor Walker would be testifying.

Chairman Kinzer opened the hearing on **HB 2207-Relating to series limited liability companies**.

Representative Rob Bruchman testified in support of **HB 2207** beginning by sharing a quote from a law professor, Roscoe Pound, Dean of Harvard Law School, "The Law must be stable, but it must not stand still." Representative Bruchman suggested the Committee must decide if it is content with the status quo, or whether it wants to join the other states that are propelling businesses forward, such as Texas, Delaware, and Utah. In the present economy, Kansas needs to focus on business development and job creation, and the Series LLC accomplishes these objectives. (Attachment 3)

Representative Bruchman **HB 2207** explained the concept of a series limited liability company 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. A series LLC provides that the particular debts, liabilities, and obligations relating to a particular series is enforceable only against the assets of the particular series and not against the assets of the series LLC or any other series within the series LLC. Representative Bruchman offered the benefits to the state is the attractiveness of series LLCs as a vehicle to encourage companies to set up diverse business interests by offering protections for ownership interests, operations, and assets. The objective behind series LLC statutes is to offer asset protection and the ability to create several business

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interests operating under one business entity structure. The series LLC will promote economic growth by providing greater business opportunities, removing administrative burdens, and promoting cost-saving attributes, including tax and liability advantages, to individuals starting and operating businesses in Kansas.

Representative Bruchman circulated a proposed balloon amendment that improves upon the original bill draft providing more flexibility of businesses to work cooperatively, contract jointly, or elect to be treated as a single business for purposes of qualification to do business. The language for the draft came from Illinois, as a model, and from Delaware in determining what might work best in Kansas. A provision was also added to incorporate language that the existing limited liability law applies on anything not specifically spelled out in the bill in subsection (j) of the balloon. (Attachment 4)

Representative Brookens noted Kansas has a limited liability agricultural company set of mandates when there is agricultural land involved or agricultural pursuits which are quite specific. He questioned whether there should be a cross reference to the Limited Liability Agricultural Act if it is to be subject to these provisions.

Cheryl Reinhardt testified in support of **HB 2207** offering the availability to utilize the series LLCs will make Kansas more competitive as a progressive business climate. Series LLCs give flexibility and reduce the administrative burden on businesses performing and operating in Kansas. Eight states have adopted series LLC statutes. Ms. Reinhardt recommended Kansas be added to the list of states offering series LLCs. (Attachment 5)

Chairman Kinzer noted the written testimony in support of **HB 2207** provided by Bob Vancrum. (Attachment 6)

Ryan Kriehauser testified as neutral on **HB 2207** on behalf of the Office of the Secretary of State. The bill, as written, does not clarify what the process is for a regular LLC to become a series LLC. Mr. Kriehauser advised their office also had a concern regarding indexing by the master LLC, but noted Representative Bruchman had addressed the issue. Mr. Kriehauser stated the cost savings to businesses means a loss of revenue to their office, although the Secretary of State is more concerned with giving businesses what the need to prosper. (Attachment 7)

Kathy Taylor testified as a neutral on **HB 2207** on behalf of the Kansas Bankers Association. There was a concern the establishment of a new series within a limited liability company would

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allow the free flow of assets apart from liabilities, without any safeguards in place to prevent the defrauding of creditors. Representative Bruchman has inserted language that requires the master LLC to file a Certificate of Designation with the Secretary of State as each series is established, which gives the public, including creditors, notice of the formation of the series. With these changes, the Kansas Bankers Association is now in a neutral position on the bill. (Attachment 8)

Chairman Kinzer closed the hearing on **HB 2207**.

The next meeting is scheduled for Monday, January 30, 2012.

The meeting was adjourned at 5:15 p.m.