

HOUSE BILL No. 2398

AN ACT concerning limited liability companies; concerning the Kansas revised limited liability company act; amending K.S.A. 17-7662, 17-7664, 17-7666, 17-7668, 17-7670, 17-7671, 17-7672, 17-7673, 17-7674, 17-7676, 17-7677, 17-7679, 17-7680, 17-7683, 17-7686, 17-7687, 17-7688, 17-7689, 17-7690, 17-7691, 17-7693, 17-7695, 17-7697, 17-7698, 17-76,100, 17-76,103, 17-76,104, 17-76,105, 17-76,106, 17-76,107, 17-76,110, 17-76,112, 17-76,113, 17-76,114, 17-76,115, 17-76,116, 17-76,117, 17-76,118, 17-76,119, 17-76,121, 17-76,121a, 17-76,122, 17-76,123, 17-76,124, 17-76,125, 17-76,126, 17-76,127, 17-76,128, 17-76,130, 17-76,131, 17-76,133, 17-76,134, 17-76,136, 17-76,137, 17-76,139 and 17-76,140 and K.S.A. 2013 Supp. 17-7663, 17-7675, 17-7678, 17-7681, 17-7682, 17-76,143, 84-9-406 and 84-9-408 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 17-7662 is hereby amended to read as follows: 17-7662. ~~This act—K.S.A. 17-7662 through 17-76,143, and amendments thereto, and sections 63 through 65, and amendments thereto,~~ shall be known and may be cited as the Kansas revised limited liability company act.

Sec. 2. K.S.A. 2013 Supp. 17-7663 is hereby amended to read as follows: 17-7663. As used in this act unless the context otherwise requires:

(a) “Articles of organization” means the articles of organization referred to in K.S.A. 17-7673, and amendments thereto, and the articles of *organization* as amended.

(b) “Bankruptcy” means an event that causes a person to cease to be a member as provided in K.S.A. 17-7689, and amendments thereto.

(c) “Contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in such person’s capacity as a member.

(d) “Foreign limited liability company” means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(e) “Knowledge” means a person’s actual knowledge of a fact, rather than the person’s constructive knowledge of the fact.

(f) “Limited liability company” and “domestic limited liability company” means a limited liability company formed under the laws of the state of Kansas and having one or more members.

(g) “*Limited liability company interest*” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

(h) “*Liquidating trustee*” means a person carrying out the winding up of a limited liability company.

(i) “*Manager*” means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, an operating agreement or similar instrument under which the limited liability company is formed.

(j) “*Member*” means a person who is admitted to a limited liability company as a member as provided in K.S.A. 17-7686, and amendments thereto, or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

~~(g)~~(k) “*Operating agreement*” means any agreement, ~~written or~~ whether referred to as an operating agreement, limited liability company agreement or otherwise, written, oral, or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the operating agreement whether or not the member or manager or assignee executes the operating agreement. A limited liability company is not required to execute its operating agreement. A limited liability company is bound by its operating agreement whether or not the limited liability company executes the operating agreement. An operating agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the operating agreement. An operating agreement is not subject to any statute of frauds, including K.S.A. 33-106, and amendments thereto. An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth therein. A written operating agreement or another written agreement or writing:

(1) May provide that a person shall be admitted as a member of a

limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, ~~and shall become bound by the operating agreement:~~

(A) If such person, or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest, executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee; or

(B) without such execution, if such person, or a representative authorized by such person orally, in writing or by other action such as payment for a limited liability company interest, complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing ~~and requests, orally, in writing or by other action such as payment for a limited liability company interest, that the records of the limited liability company reflect such admission or assignment;~~ and

(2) shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in ~~subparagraph (a) of this paragraph~~ *subsection (k)(1)*, or by reason of its having been signed by a representative as provided in this act.

~~(h) “Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.~~

~~(i) “Liquidating trustee” means a person carrying out the winding up of a limited liability company.~~

~~(j) “Majority in interest” means the affirmative vote or consent of the members who own more than 50% of the then current percentage or other interest in the profits of the limited liability company owned by all members entitled to vote thereon or the members in each class or group entitled to vote thereon as appropriate.~~

~~(k) “Manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of, a limited liability company pursuant to an operating agreement or similar instrument under which the limited liability company is formed.~~

~~(l) “Member” means a person who has been admitted to a limited liability company as a member as provided in K.S.A. 17-7686, and amendments thereto, or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.~~

~~(m)(l) “Person” means a natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, foreign limited liability company, trust, including a common law trust, business trust, statutory trust, voting trust or any other form of trust, estate, association, including any group, organization, co-tenancy, plan, board, council or committee, corporation, government, including a country, state, county or any other governmental subdivision, agency or instrumentality, custodian, nominee or any other individual or entity, or series thereof, in its own or any representative capacity, in each case, whether domestic or foreign.~~

~~(n)(m) “Personal representative” means, as to a natural person, the executor, administrator, guardian, conservator or other legal representative thereof and, as to a person other than a natural person, the legal representative or successor thereof.~~

~~(o)(n) “State” means the District of Columbia or the commonwealth of Puerto Rico or any state, territory, possession or other jurisdiction of the United States other than the state of Kansas.~~

Sec. 3. K.S.A. 17-7664 is hereby amended to read as follows: 17-7664. The name of each limited liability company as set forth in its articles of organization:

(a) Shall contain the words “limited liability company” or “limited company,” or the abbreviation “LLC,” “LC” “L.L.C.,” “L.C.” or the designation “LLC” or “LC”;

(b) may contain the name of a member or manager;

(c) must be such as to distinguish it upon the records with the secretary of state from the name *on such records* of any corporation, *part-*

nership, limited partnership, business trust, ~~registered limited liability partnership~~ or limited liability company reserved, registered, formed or organized under the laws of the state of Kansas or qualified to do business or registered as a foreign corporation, foreign limited partnership, *foreign business trust*, *foreign partnership* or foreign limited liability company in the state of Kansas, ~~provided however~~, *except* that a limited liability company may register under any name which is not such as to distinguish it upon the records with the secretary of state from the name *on such records* of any domestic or foreign corporation, *partnership*, limited partnership, business trust, ~~registered limited liability partnership~~ or limited liability company reserved, registered, formed ~~or~~, organized *or qualified to do business* under the laws of the state of Kansas with the written consent of the other *domestic or foreign* corporation, *partnership*, limited partnership, business trust, ~~registered limited liability partnership~~ or limited liability company, which written consent shall be filed with the secretary of state; and

(d) may contain the following words: “company,” “association,” “club,” “foundation,” “fund,” “institute,” “society,” “union,” “syndicate,” “limited” or “trust” (or abbreviations of like import).

Sec. 4. K.S.A. 17-7666 is hereby amended to read as follows: 17-7666.

(a) Each limited liability company shall have and maintain in the state of Kansas:

(1) A registered office, which may but need not be a place of its business in the state of Kansas; and

(2) a resident agent for service of process on the limited liability company, which agent may be either an individual resident of the state of Kansas whose business office is identical with the limited liability company’s registered office, or a domestic corporation, or a domestic limited partnership, or a domestic limited liability company, or a domestic business trust or a foreign corporation, or a foreign limited partnership, or a foreign limited liability company, or foreign business trust authorized to do business in the state of Kansas having a business office identical with such registered office, which is generally open during normal business hours to accept service of process and otherwise perform the functions of a resident agent, or the limited liability company itself.

(b) A resident agent may change the address of the registered office of the limited liability company or companies for which such resident agent is resident agent to another address in the state of Kansas by paying a fee as set forth in K.S.A. 17-76,136, and amendments thereto, and filing with the secretary of state a certificate, executed by such resident agent, setting forth the names of all the limited liability companies represented by such resident agent, and the address at which such resident agent has maintained the registered office for each of such limited liability companies, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such resident agent will thereafter maintain the registered office for each of the limited liability companies recited in the certificate. Upon the filing of such certificate, the secretary of state shall furnish to the resident agent a certified copy of the same under the secretary’s hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in the state of Kansas of each of the limited liability companies recited in the certificate shall be located at the new address of the resident agent thereof as given in the certificate. In the event of a change of name of any person acting as a resident agent of a limited liability company, such resident agent shall file with the secretary of state a certificate, executed by such resident agent, setting forth the new name of such resident agent, the name of such resident agent before it was changed, the names of all the limited liability companies represented by such resident agent, and the address at which such resident agent has maintained the registered office for each of such limited liability companies, and shall pay a fee as set forth in K.S.A. 17-76,136, and amendments thereto. Upon the filing of such certificate, the secretary of state shall furnish to the resident agent a certified copy of the certificate under hand and seal of office. Filing a certificate under this section shall be deemed to be an amendment of the articles of organization of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect

thereto, to amend its articles of organization under K.S.A. ~~17-76,136-17-7674~~, and amendments thereto. Any resident agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The resident agent of one or more limited liability companies may resign and appoint a successor resident agent by paying a fee as set forth in K.S.A. 17-76,136, and amendments thereto, and filing a certificate with the secretary of state, stating that the resident agent resigns and the name and address of the successor resident agent. There shall be attached to such certificate a statement executed by each affected limited liability company ratifying and approving such change of resident agent. Upon such filing, the successor resident agent shall become the resident agent of such limited liability companies as have ratified and approved such substitution and the successor resident agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the state of Kansas. The secretary of state shall furnish to the successor resident agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the articles of organization of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its articles of organization under K.S.A. ~~17-76,136-17-7674~~, and amendments thereto.

(d) The resident agent of a limited liability company may resign without appointing a successor resident agent by paying a fee as set forth in K.S.A. 17-76,136, and amendments thereto, and filing a certificate with the secretary of state stating that the resident agent resigns as resident agent for the limited liability company identified in the certificate, but such resignation shall not become effective until 60 days after the certificate is filed. There shall be attached to said certificate an affidavit of such resident agent, if an individual, or the president, a vice-president or the secretary thereof if a corporation, that at least 30 days prior to and on or about the date of the filing of such certificate, notices were sent by certified or registered mail to the limited liability company for which such resident agent is resigning as resident agent, at the principal office thereof within or outside the state of Kansas, if known to such resident agent or, if not, to the last known address of the attorney or other individual at whose request such resident agent was appointed for such limited liability company, of the resignation of such resident agent. After receipt of the notice of the resignation of its resident agent, the limited liability company for which such resident agent was acting shall obtain and designate a new resident agent, to take the place of the resident agent so resigning. If such limited liability company fails to obtain and designate a new resident agent as aforesaid prior to the expiration of the period of 60 days after the filing by the resident agent of the certificate of resignation, the articles of organization of such limited liability company shall be deemed to be canceled. After the resignation of the resident agent shall have become effective as provided in this section and if no new resident agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited liability company for which the resigned resident agent had been acting shall thereafter be upon the secretary of state in accordance with K.S.A. ~~17-76,136-60-304~~, and amendments thereto.

(e) If a domestic limited liability company's resident agent dies or moves from the registered office, the limited liability company shall designate and certify to the secretary of state the name of another resident agent within 30 days of the death or move. If no new resident agent is designated, the service of legal process on the limited liability company may be made as prescribed in K.S.A. 60-304, and amendments thereto. If any domestic limited liability company fails to designate a new resident agent as required by this subsection, the secretary of state, after giving 30 days' notice of the intended action, may declare the articles of organization canceled.

Sec. 5. K.S.A. 17-7668 is hereby amended to read as follows: 17-7668.

(a) Unless otherwise specifically prohibited by law, a limited liability company 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, or assuming insurance risks or banking as defined in K.S.A. 9-702, and amendments thereto.

(b) A limited liability company shall possess and may exercise all the powers and privileges granted by this act or by any other law or by its operating agreement, together with any powers incidental thereto, ~~so far as~~ *as including* such powers and privileges *as* are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

(c) A limited liability company organized and existing under the Kansas *revised* limited liability company act or otherwise qualified to do business in Kansas may have and exercise all powers which may be exercised by a Kansas professional association or professional corporation under the professional corporation law of Kansas, including employment of professionals to practice a profession, which shall be limited to the practice of one profession, except as provided in K.S.A. 17-2710, and amendments thereto.

(d) Only a qualified person may be a member of a limited liability company organized to exercise powers of a professional association or professional corporation. No membership may be transferred to another person until there is presented to such limited liability company a certificate by the licensing body, as defined in K.S.A. 74-146, and amendments thereto, stating that the person to whom the transfer is made or the membership issued is duly licensed to render the same type of professional services as that for which the limited liability company was organized.

(e) As used in the section, “qualified person” means:

(1) Any natural person licensed to practice the same type of profession which any professional *association or professional* corporation is authorized to practice;

(2) the trustee of a trust which is a qualified trust under subsection (a) of section 401 of the federal internal revenue code of 1986, as in effect, on July 1, 1999, or of a contribution plan which is a qualified employee stock ownership plan under subsection (a) of section 409A of the federal internal revenue code of 1986, as in effect, on July 1, 1999;

(3) the trustee of a revocable living trust established by a natural person who is licensed to practice the type of profession which any professional *association or professional* corporation is authorized to practice, if the terms of such trust provide that such natural person is the principal beneficiary and sole trustee of such trust and such trust does not continue to hold title to membership in the limited liability company following such natural person’s death for more than a reasonable period of time necessary to dispose of such membership; ~~or~~

(4) a Kansas professional corporation or foreign professional corporation in which at least one member or shareholder is authorized by a licensing body, as defined in K.S.A. 74-146, and amendments thereto, to render in this state a professional service permitted by the articles of organization; or

(5) a general partnership or limited liability company, if all partners or members thereof are authorized to render the professional services permitted by the articles of organization of the ~~issuing~~ limited liability company formed pursuant to this section and in which at least one partner or member is authorized by a licensing authority of this state to render in this state the professional services permitted by the articles of organization of the limited liability company.

(f) Nothing in this act shall restrict or limit in any manner the authority and duty of any licensing body, as defined in K.S.A. 74-146, and amendments thereto, for the licensing of individual persons rendering a professional service or the practice of the profession which is within the jurisdiction of the licensing body, notwithstanding that the person is an officer, manager, member or employee of a limited liability company organized to exercise powers of a professional association or *professional* corporation. Each licensing body may adopt rules and regulations governing the practice of each profession as are necessary to enforce and comply with this act and the law applicable to each profession.

(g) A licensing body, as defined in K.S.A. 74-146, and amendments thereto, the attorney general or district or county attorney may bring an action in the name of the state of Kansas in quo warranto or injunction

against a limited liability company engaging in the practice of a profession ~~with~~ *without* complying with the provisions of this act.

~~(h) A limited liability company organized to exercise powers of a professional association or professional corporation under the Kansas limited liability company act prior to July 1, 1999, shall file with the secretary of state at the time of making an annual report for the calendar year 1999 a certificate by the licensing body, as defined in K.S.A. 74-146, and amendments thereto, of the profession involved that each of the members is duly licensed to practice that profession, and that the proposed company name has been approved. Notwithstanding any provision of this act to the contrary, without limiting the general powers enumerated in subsection (b), a limited liability company shall, subject to such standards and restrictions, if any, as are set forth in its operating agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.~~

~~(i) Unless otherwise provided in an operating agreement, a limited liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.~~

Sec. 6. K.S.A. 17-7670 is hereby amended to read as follows: 17-7670.

(a) Subject to such standards and restrictions, if any, as are set forth in its operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(b) To the extent that a *present or former* member, manager, officer, employee or agent of a *limited liability company* has been successful on the merits or otherwise ~~or the defenses of any action, suits or proceeding, or in defense of any issue or matter therein, such director, officer, employee or agent~~ *as a plaintiff in an action to determine that the plaintiff is a member of a limited liability company or in defense of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a member, manager, officer, employee or agent of the limited liability company, or is or was serving at the request of the limited liability company as a member, manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, or in defense of any claim, issue or matter therein, such member, manager, officer, employee or agent* shall be indemnified *by the limited liability company* against expenses actually and reasonably incurred by such person in connection therewith, including attorney fees.

Sec. 7. K.S.A. 17-7671 is hereby amended to read as follows: 17-7671.

(a) Upon application of any member or manager, *as defined in subsection (c)*, the district court may hear and determine the validity of any admission, election, appointment, removal or resignation of a manager of a limited liability company, and the right of any person to become or continue to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than one person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, the limited liability company shall be named as a party, and service of copies of the application upon the resident agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the resident agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the resident agent or furnished to the resident agent by the applicant member or manager. The court

may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(b) Upon application of any member or manager, the district court may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the operating agreement or other agreement or this act, other than the admission, election, appointment, removal or resignation of managers. In any such application, the limited liability company shall be named as a party, and service of the application upon the resident agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the court to adjudicate the result of the vote. The court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(c) *As used in this section, the term “manager” refers to a person:*

(1) *Who is a manager as defined in subsection (i) of K.S.A. 17-7663, and amendments thereto; and*

(2) *whether or not a member of a limited liability company, who, although not a manager as defined in subsection (i) of K.S.A. 17-7663, and amendments thereto, participates materially in the management of the limited liability company, except that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in subsection (i) of K.S.A. 17-7663, and amendments thereto, shall not, by itself, constitute participation in the management of the limited liability company.*

~~(e)~~(d) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

Sec. 8. K.S.A. 17-7672 is hereby amended to read as follows: 17-7672.

(a) Any action to interpret, apply or enforce the provisions of an operating agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, or any provision of this act, or any other instrument, document, agreement, articles of organization or certificate contemplated by any provision of this act, may be brought in the district court.

(b) *As used in this section, the term “manager” refers to a person:*

(1) *Who is a manager as defined in subsection (i) of K.S.A. 17-7663, and amendments thereto; and*

(2) *whether or not a member of a limited liability company, who, although not a manager as defined in subsection (i) of K.S.A. 17-7663, and amendments thereto, participates materially in the management of the limited liability company, except that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in subsection (i) of K.S.A. 17-7663, and amendments thereto, shall not, by itself, constitute participation in the management of the limited liability company.*

Sec. 9. K.S.A. 17-7673 is hereby amended to read as follows: 17-7673.

(a) In order to form a limited liability company, one or more authorized persons must execute articles of organization. The articles of organization shall be filed with the secretary of state and set forth:

(1) The name of the limited liability company;

(2) the address of the registered office and the name and address of the resident agent for service of process required to be maintained by K.S.A. 17-7666, and amendments thereto;

(3) any other matters the members determine to include therein; ~~and~~

(4) if the limited liability company is organized to exercise the powers of a professional association or professional corporation, each such profession shall be stated; and

(5) if the limited liability company will have series, the matters required by K.S.A. 17-76,143, and amendments thereto.

(b) A limited liability company is formed at the time of the filing of the initial articles of organization with the secretary of state or at any later

date or time specified in the articles of organization which is not later than 90 days after the date of filing, if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this act shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's articles of organization.

(c) An operating agreement ~~may~~ shall be entered into *or otherwise existing* either before, after or at the time of the filing of the articles of organization and, whether entered into *or otherwise existing* before, after or at the time of such filing, may be made effective as of the ~~formation of the limited liability company~~ *effective time of such filing* or at such other time or date as provided in *or reflected by* the operating agreement.

Sec. 10. K.S.A. 17-7674 is hereby amended to read as follows: 17-7674. (a) Articles of organization are amended by filing a certificate of amendment thereto with the secretary of state. The certificate of amendment shall set forth:

- (1) The name of the limited liability company; and
- (2) the amendment to the articles of organization.

(b) A manager or, if there is no manager, then any member who becomes aware that any statement in the articles of organization was false *in any material respect* when made, or that any matter described has changed making the articles of organization false in any material respect, shall promptly amend the articles of organization.

(c) Articles of organization may be amended at any time for any other proper purpose.

(d) Unless otherwise provided in this act or unless a later effective date or time ~~is~~, which shall be a date or time certain within 90 days of the date of filing, 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.

Sec. 11. K.S.A. 2013 Supp. 17-7675 is hereby amended to read as follows: 17-7675. (a) Articles of organization shall be canceled upon the dissolution and the completion of winding up of a limited liability company, or as provided in subsection (d) *or (e)* of K.S.A. 17-7666, and amendments thereto, or K.S.A. 17-76,139, and amendments thereto, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation *or upon the future effective date of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation*. A certificate of cancellation shall be filed with the secretary of state to accomplish the cancellation of articles of organization upon the dissolution and the completion of winding up of a limited liability company. The certificate shall set forth:

- ~~(a)~~ (1) The name of the limited liability company;
- ~~(b)~~ (2) the reason for filing the certificate of cancellation;
- ~~(c)~~ (3) the future effective date or time, which shall be a date or time certain not later than 90 days after the date of filing, of cancellation if it is not to be effective upon the filing of the certificate; and
- ~~(d)~~ (4) any other information the person filing the certificate of cancellation determines.

(b) *A certificate of cancellation that is filed with the secretary of state prior to the dissolution or the completion of winding up of a limited liability company may be corrected as an erroneously executed certificate of cancellation by filing with the secretary of state a certificate of correction of such certificate of cancellation in accordance with K.S.A. 17-7683, and amendments thereto.*

(c) *The secretary of state shall not issue a certificate of good standing with respect to a limited liability company if its articles of organization are canceled.*

Sec. 12. K.S.A. 17-7676 is hereby amended to read as follows: 17-7676. (a) ~~Each of~~ The articles ~~or any~~ of organization and each certificate required by ~~this act~~ K.S.A. 17-7673 through 17-7683, and amendments thereto, to be filed with the secretary of state shall be executed by one or more authorized persons.

(b) Unless otherwise provided in an operating agreement, any person may sign ~~the~~ articles; *of organization* or any certificate, or any amendment thereof, or enter into an operating agreement or amendment thereof by

an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign ~~any~~ articles; *of organization or any* certificate, or any ~~amendments~~ *amendment* thereof, or to enter into an operating agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed with the secretary of state, but if in writing, must be retained by the limited liability company.

(c) *For all purposes of the laws of the state of Kansas, a power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such irrevocable power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or an assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power.*

(d) *The execution of articles of organization or a certificate by ~~an authorized~~ a person who is authorized by this act to execute such articles of organization or certificate, upon filing such articles of organization or certificate with the secretary of state, constitutes an oath or affirmation, under the penalties of perjury that, to the best of ~~the authorized~~ such person's knowledge and belief, the facts stated therein are true.*

Sec. 13. K.S.A. 17-7677 is hereby amended to read as follows: 17-7677. (a) If a person required to execute *articles of organization or a certificate required by ~~this act~~ K.S.A. 17-7673 through 17-7683, and amendments thereto*, fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the *articles of organization or certificate*. If the court finds that the execution of the *articles of organization or certificate* is proper and that any person so designated has failed or refused to execute the *articles of organization or certificate*, it shall order the secretary of state to record ~~an~~ *appropriate articles of organization or a certificate*.

(b) If a person required to execute an operating agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the operating agreement or amendment thereof. If the court finds that the operating agreement or amendment thereof should be executed and that any person required to execute the operating agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

Sec. 14. K.S.A. 2013 Supp. 17-7678 is hereby amended to read as follows: 17-7678. (a) The original signed copy of articles of organization or any certificate to be filed pursuant to this act, shall be filed with the secretary of state, where the instrument shall be recorded in an electronic medium. A person who executes *articles of organization, a certificate, or a statement ~~or articles~~* as an agent or fiduciary shall not be required to exhibit evidence of the person's authority as a prerequisite to filing. Any signature on any articles of organization or certificate authorized to be filed with the secretary of state under any provision of this act may be a facsimile, a conformed signature or an electronically transmitted signature. Unless the secretary of state finds that any filing does not conform to law, upon receipt of all filing fees required by law, the secretary of state shall:

(1) Certify that such document has been filed in the secretary of state's office by endorsing upon the electronically-recorded document the word "filed" and the date and hour of the filing; in the absence of actual fraud, this endorsement is conclusive of the date and time of its filing;

(2) record the endorsed document in an electronic medium and that electronic document shall become the original document; and

(3) return a copy of the recorded document, to the person who filed it or such person's representative.

(b) The articles of organization shall be amended as provided in a certificate of amendment or judicial decree of amendment upon the filing of the certificate of amendment or judicial decree of amendment with the secretary of state or upon the future effective date specified in the certificate of amendment. An inaccuracy in the articles of organization may be corrected by filing a certificate of correction with the secretary of state as provided in K.S.A. 17-7683, and amendments thereto. The articles of organization are canceled upon the ~~issuance of filing with the secretary of state~~ of a certificate of cancellation or certificate of merger or consolidation where the limited liability company is not the surviving or resulting entity ~~by the secretary of state or upon the future effective date of the certificate of cancellation or certificate of merger or consolidation.~~

(c) The fee required by this act shall be paid at the time of the filing of any articles of organization or any certificate to be filed pursuant to this act.

(d) The fee required by this act shall be paid for a certified copy of any paper on file pursuant to this act and the fee fixed pursuant to this act shall be paid for each page copied.

(e) The secretary of state may prescribe a telefacsimile communication fee in addition to any filing fees to cover the cost of such services. This fee must be paid prior to acceptance of a telefacsimile communication and shall be deposited into the information and copy service fee fund.

(f) Upon filing the articles of organization of a limited liability company organized to exercise powers of a professional association or professional corporation, the limited liability company shall file with the secretary of state a certificate by the licensing body, as defined in K.S.A. 74-146, and amendments thereto, of the profession involved that each of the members is duly licensed to practice that profession, and that the proposed company name has been approved.

Sec. 15. K.S.A. 17-7679 is hereby amended to read as follows: 17-7679. The fact that articles of organization, or amendments thereto, ~~of a limited liability company~~ are on file with the secretary of state is notice that the entity formed in connection with the filing of the articles of organization is a limited liability company formed under the laws of the state of Kansas and is notice ~~for all purposes with respect to all matters required to be set forth therein~~ of all other facts set forth therein which are required to be set forth in articles of organization by subsections (a)(1), (a)(2), (a)(4) and (a)(5) of K.S.A. 17-7673, and amendments thereto.

Sec. 16. K.S.A. 17-7680 is hereby amended to read as follows: 17-7680. (a) A limited liability company *may*, whenever desired, ~~may~~ integrate into a single instrument all of the provisions of its articles of organization which are then in effect and operative as a result of there having previously been filed with the secretary of state one or more certificates or other instruments pursuant to ~~this act~~ K.S.A. 17-7673 through 17-7683, and amendments thereto, and it may at the same time also further amend its articles of organization by adopting restated articles of organization.

(b) ~~If the~~ restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate or instrument that was executed and filed pursuant to ~~this act~~ K.S.A. 17-7673 through 17-7683, and amendments thereto, they shall be specifically designated in their heading as "restated articles of organization" together with such other words as the *limited liability* company may deem appropriate and shall be executed *by an authorized person* and filed *as provided in* K.S.A. 17-7678, and amendments thereto, with the secretary of state. ~~If the~~ restated articles of organization restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as "amended and restated articles of organization" together with such other words as the *limited liability* company may deem appropriate and shall

be executed *by at least one authorized person* and filed *as provided in K.S.A. 17-7678, and amendments thereto*, with the secretary of state.

(c) Restated articles of organization ~~shall be specifically designated as such in the heading. They~~ shall state, either in their heading or in an introductory paragraph, the *limited liability* company's present name; if it has been changed, the name under which it was originally filed; the date of filing of its original articles of organization with the secretary of state; and the future effective date, *which shall be a date certain*, of the restated articles of organization if they are not to be effective upon the filing of the restated articles of organization with the secretary of state ~~}; such future effective date must be within 90 days of the date of filing such restated articles of organization with the secretary of state~~). Restated articles ~~also of organization shall also~~ state that they were duly executed and *are being* filed in accordance with ~~the provisions of~~ this section. If ~~the~~ restated articles *of organization* only restate and integrate and do not further amend ~~the provisions of the~~ *a limited liability company's* articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and ~~the provisions of the~~ restated articles *of organization*, they shall state that fact as well.

(d) Upon the filing of ~~the~~ restated articles of organization with the secretary of state, or upon the future effective date of restated articles of organization as provided for therein, the initial articles *of organization*, as previously amended or supplemented, shall be superseded. Thereafter the restated articles of organization, including any further amendment or changes made ~~by the restated articles thereby~~, shall be the articles of organization *of the limited liability company*, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change ~~made effected~~ in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this act, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to ~~make~~ *the effect* such amendment or change.

Sec. 17. K.S.A. 2013 Supp. 17-7681 is hereby amended to read as follows: 17-7681. (a) Pursuant to an agreement of merger or consolidation, ~~a one or more~~ domestic limited liability ~~company~~ *companies* may merge or consolidate with or into one or more limited liability companies formed under the laws of ~~this~~ *the state of Kansas* or any other state or any foreign country or other foreign jurisdiction, or any combination thereof, with such limited liability company as the agreement shall provide being the surviving or resulting limited liability company. Unless otherwise provided in the ~~limited liability company~~ operating agreement, ~~a an~~ *agreement* of merger or consolidation shall be approved by each domestic limited liability company which is to merge or consolidate by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by ~~the affirmative vote or consent of not less than a majority in interest of the remaining~~ members *who own more than 50% of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate*. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting limited liability company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a limited liability company which is not the surviving or resulting limited liability company in the merger or consolidation *or may be canceled*. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) The limited liability company surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation *executed by one or more authorized persons on behalf of the domestic limited liability company when it is the surviving or resulting entity* with the secretary of state. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies which is to merge or consolidate;

(2) that an agreement of merger or consolidation has been approved and executed by each of the limited liability companies which is to merge or consolidate;

(3) the name of the surviving or resulting limited liability company;

(4) *in the case of a merger in which a domestic limited liability company is the surviving entity, such amendments, if any, to the articles of organization of the surviving domestic limited liability company to change its name, registered office or resident agent as are desired to be effected by the merger;*

~~(4)(5)~~ (5) the future effective date or time, *which shall be a date certain*, of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation, which date shall, in no event, exceed 90 days after the date the certificate is filed ~~in~~ with the secretary of ~~state's office~~ *state*;

~~(5)(6)~~ (6) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company, and shall state the address thereof;

~~(6)(7)~~ (7) that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company, on request and without cost, to any member of any limited liability company which is to merge or consolidate; and

~~(7)(8)~~ (8) if the surviving or resulting ~~entity~~ *entity limited liability company* is not a domestic limited liability company, a statement that such surviving ~~entity or resulting limited liability company~~ *entity or resulting limited liability company* agrees that it may be served with process in the state of Kansas in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state.

(c) ~~Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing with the secretary of state of a certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by subsection (b) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been amended and shall state that the agreement of merger or consolidation has been amended and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is terminated as permitted by subsection (a) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be terminated by the filing of a certificate of termination of a merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation which has been terminated and shall state that the agreement of merger or consolidation has been terminated.~~

(d) A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting ~~entity~~ *entity limited liability company* in the merger or consolidation. *A certificate of merger that sets forth any amendment in accordance with subsection (b)(4) shall be deemed to be an amendment to the articles of organization of the limited liability company, and the limited liability company shall not be required to take any further action to amend its articles of organization under K.S.A. 17-7674, and amendments thereto, with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of*

merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(e) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may:

- (1) Effect any amendment to the operating agreement; or
- (2) effect the adoption of a new operating agreement, *for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation.*

Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing ~~provision~~ *sentence* shall be effective at the effective time or date of the merger or consolidation *and shall be effective notwithstanding any provision of the operating agreement relating to amendment or adoption of a new operating agreement, other than a provision that by its terms applies to an amendment to the operating agreement or the adoption of a new operating agreement, in either case, in connection with a merger or consolidation.* The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation ~~(including a limited liability company formed for the purpose of consummating a merger or consolidation)~~, shall be the operating agreement of the surviving or resulting limited liability company.

(f) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state of Kansas, all of the rights, privileges and powers of each of the limited liability companies that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of the limited liability companies, as well as all other things and causes of action belonging to each of such limited liability companies, shall be vested in the surviving or resulting limited liability company, and shall thereafter be the property of the surviving or resulting limited liability company as they were of each of the limited liability companies that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state of Kansas, in any of such limited liability companies, shall not revert or be in any way impaired by reason of this ~~section~~ *act*, but all rights of creditors and all liens upon any property of any of the limited liability companies shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited liability companies that have merged or consolidated shall thenceforth attach to the surviving or resulting limited liability company, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a *domestic* limited liability company, including a *domestic* limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require such *domestic* limited liability company to wind up its affairs under K.S.A. 17-76,118, and amendments thereto, or pay its liabilities and distribute its assets under K.S.A. 17-76,119, and amendments thereto, *and the merger or consolidation shall not constitute a dissolution of such limited liability company.*

(g) A limited liability company may merge or consolidate with or into any other entity in accordance with the business entity transactions act, K.S.A. 2013 Supp. 17-78-101 et seq., and amendments thereto.

(h) *An operating agreement may provide that a domestic limited liability company shall not have the power to merge or consolidate as set forth in this section.*

Sec. 18. K.S.A. 2013 Supp. 17-7682 is hereby amended to read as follows: 17-7682. An operating agreement or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class, group or series of members or limited liability company interests in connection with any amendment of ~~the~~ *an* operating agreement, any merger or consolidation in which the limited liability company is a constituent party to the merger

or consolidation, or the sale of all or substantially all of the limited liability company's assets. The district court shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

Sec. 19. K.S.A. 17-7683 is hereby amended to read as follows: 17-7683. (a) Whenever any articles of *organization* or certificate authorized to be filed with the secretary of state under any provision of this act has been so filed and is ~~an inaccurate in any respect~~ *record of the action therein referred to*, or was defectively or erroneously executed, such articles of *organization* or certificate may be corrected by filing with the secretary of state a certificate of correction of such articles of *organization* or certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the articles of *organization* or certificate in corrected form and shall be executed and filed as required by this act. The certificate of correction shall be effective as of the date the original articles of *organization* or certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date.

(b) In lieu of filing a certificate of correction, articles of *organization* or a certificate may be corrected by filing with the secretary of state *corrected articles of organization* or a corrected certificate which shall be executed and filed as if the corrected *articles of organization* or certificate were the articles of *organization* or certificate being corrected, and a fee equal to the fee payable to the secretary of state if the articles of *organization* or certificate being corrected were then being filed shall be paid and collected by the secretary of state for the use of the state of Kansas in connection with the filing of the corrected *articles of organization* or certificate. The corrected *articles of organization* or certificate shall be specifically designated as such in *their* or its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth *all articles of organization* or the entire ~~articles or~~ certificate in corrected form. Articles of *organization* or a certificate corrected in accordance with this section shall be effective as of the date the original articles of *organization* or certificate was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the articles of *organization* or certificate as corrected shall be effective from the filing date.

(c) The secretary of state may correct the secretary's own errors on the secretary's own motion.

Sec. 20. K.S.A. 17-7686 is hereby amended to read as follows: 17-7686. (a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

- (1) The formation of the limited liability company; or
- (2) the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

- (1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;

(2) in the case of an assignee of a limited liability company interest, as provided in subsection (a) of K.S.A. 17-76,114, and amendments thereto, and at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company; or

(3) unless otherwise provided in an agreement of merger or consolidation, in the case of a person acquiring a limited liability company in-

terest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with subsection ~~(b)~~ (a) of K.S.A. 17-7681, and amendments thereto, at the time provided in and upon compliance with the operating agreement of the surviving or resulting limited liability company; *and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or consolidation in which such limited liability company is not the surviving or resulting limited liability company in the merger or consolidation, as provided in the operating agreement of such limited liability company.*

(c) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in an operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company. Unless otherwise provided in ~~a~~ an operating agreement, a person may be admitted as the sole member of a limited liability company without making a contribution or being obligated to make a contribution to the limited liability company or without acquiring a limited liability company interest in the limited liability company.

(d) *Unless otherwise provided in an operating agreement or another agreement, a member shall have no preemptive right to subscribe to any additional issue of limited liability company interests or another interest in a limited liability company.*

Sec. 21. K.S.A. 17-7687 is hereby amended to read as follows: 17-7687. (a) An operating agreement may provide for classes or groups of members 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 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. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the operating agreement a class or group of limited liability company interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members shall have no voting rights.

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

(c) An operating agreement ~~which grants a right to vote~~ may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in an operating agreement, *meetings of members may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in an operating agreement, on any matter that is to be voted on, consented to or approved by members, the members may take such action without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the consented to, in writing or by electronic transmission, by members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting which unless otherwise provided in the operating agreement or this act shall be a majority in interest of each class at which all members entitled to vote thereon were present and voted.* Unless otherwise provided in an

operating agreement, on any matter that is to be voted on by members, the members may vote in person or by proxy, *and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in an operating agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.*

(e) Unless otherwise provided in the operating agreement or in this act, every member holding an interest in profits shall be entitled to vote.

~~(f) When, under the provisions of this act or under the provisions of the articles of organization or operating agreement of a limited liability company, notice is required to be given to a member of a limited liability company a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice. If an operating agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the operating agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, including as permitted by subsection (e) of K.S.A. 17-7681, and amendments thereto, provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended. Unless otherwise provided in an operating agreement, a supermajority amendment provision shall only apply to provisions of the operating agreement that are expressly included in the operating agreement. As used in this section, “supermajority amendment provision” means any amendment provision set forth in an operating agreement requiring that an amendment to a provision of the operating agreement be adopted by no less than the vote or consent required to take action under such latter provision.~~

(g) *If an operating agreement does not provide for the manner in which it may be amended, the operating agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by subsection (e) of K.S.A. 17-7681, and amendments thereto. This subsection shall only apply to a limited liability company whose original articles of organization were filed with the secretary of state on or after July 1, 2014.*

Sec. 22. K.S.A. 17-7688 is hereby amended to read as follows: 17-7688. (a) Except as otherwise provided by this act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(b) Notwithstanding the provisions of subsection (a) ~~of this section~~, 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 the limited liability company.

~~(c) A member or manager of a limited liability company is not a proper party to proceedings by or against a limited liability company, except when the object is to enforce a member’s or manager’s right against, or liability to, the limited liability company.~~

Sec. 23. K.S.A. 17-7689 is hereby amended to read as follows: 17-7689. A person ceases to be a member of a limited liability company ~~and shall become an assignee~~ upon the happening of any of the following events:

(a) Unless otherwise provided in an operating agreement, or with the written consent of all members, a member:

- (1) Makes an assignment for the benefit of creditors;
- (2) files a voluntary petition in bankruptcy;

(3) is adjudged a bankrupt or insolvent, or has entered against the member an order for relief, in any bankruptcy or insolvency proceeding;

(4) files a petition or answer seeking for the ~~member's own self~~ *member* any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature;

(6) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties; or

(b) unless otherwise provided in an operating agreement, or with the written consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

Sec. 24. K.S.A. 17-7690 is hereby amended to read as follows: 17-7690. (a) Each member of a limited liability company has the right, subject to such reasonable standards ~~and~~, including standards governing what information and documents are to be furnished at what time and location and at whose expense, as may be set forth in an operating agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(1) True and full information regarding the status of the business and financial condition of the limited liability company;

(2) promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(3) a current list of the name and last known business, residence or mailing address of each member and manager;

(4) a copy of any written operating agreement and articles of organization and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the operating agreement and any certificate and all amendments thereto have been executed;

(5) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) other information regarding the affairs of the limited liability company as is just and reasonable.

(b) Each manager shall have the right to examine all of the information described in subsection (a) ~~of this section~~ for a purpose reasonably related to the ~~manager's position as a~~ *of* manager.

(c) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(d) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be brought in the district court. If the limited liability company refuses to permit a member to obtain or a manager to examine the information described in subsection (a) ~~(3) of this section~~ or does not reply to the

demand that has been made within five business days, *or such shorter or longer period of time as is provided for in an operating agreement, but not longer than 30 business days*, after the demand has been made, the demanding member or manager may apply to the district court for an order to compel such disclosure. The district court may summarily order the limited liability company to permit the demanding member to obtain or manager to examine the information described in subsection (a)(3) ~~of this section~~ and to make copies or abstracts therefrom, or the district court may summarily order the limited liability company to furnish to the demanding member or manager the information described in subsection (a)(3) ~~of this section~~ on the condition that the demanding member or manager first pay to the limited liability company the reasonable cost of obtaining and furnishing such information and on such other conditions as the district court deems appropriate. When a demanding member seeks to obtain or a manager seeks to examine the information described in subsection (a)(3) ~~of this section~~, the demanding member or manager shall first establish (1) that the demanding member or manager has complied with the provisions of this section respecting the form and manner of making demand for obtaining or examining of such information, and (2) that the information the demanding member or manager seeks is reasonably related to the member's interest as a member or the manager's position as a manager, as the case may be. The district court may, in its discretion, prescribe any limitations or conditions with reference to the obtaining or examining of information, or award such other or further relief as the district court may deem just and proper. The district court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the state of Kansas and kept in the state of Kansas upon such terms and conditions as the order may prescribe.

(g) ~~Failure to maintain books and records shall not be grounds for personal liability of any member or manager. The rights of a member or manager to obtain information as provided in this section may be restricted in an original operating agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the operating agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this act.~~

Sec. 25. K.S.A. 17-7691 is hereby amended to read as follows: 17-7691. An operating agreement may provide that:

(a) A member who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

(b) at the time or upon the happening of events specified in the operating agreement, a member shall be subject to specified penalties or specified consequences.

Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in subsection (c) of K.S.A. 17-76,100, and amendments thereto.

Sec. 26. K.S.A. 17-7693 is hereby amended to read as follows: 17-7693. ~~(a)~~ Unless otherwise provided in an operating agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50% of the *then current* percentage or other interest in the profits controlling; ~~provided however, except that if an operating agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen by the members in the manner provided in the operating agreement. The manager shall also hold the offices and have the responsibilities accorded to the manager by the members and set forth or in the manner provided in an operating agreement. Subject to K.S.A. 17-76,105, and amendments thereto, a manager shall cease to be a manager as provided in an operating agreement. A limited liability company may have more than one manager. Unless otherwise provided in an operating agreement, each member in a member~~

managed LLC has the authority to bind the limited liability company, and each manager, in a manager managed LLC has the authority to bind the LLC.

~~(b) If the articles of organization provide that management of the limited liability company is vested in one or more managers: (1) No member acting solely in the member's capacity as a member, is an agent of the limited liability company, and (2) every manager is an agent of the limited liability company for the purpose of its business and affairs, and the act of any manager for apparently carrying on the usual way of the business or affairs of the limited liability of which the manager is a manager binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.~~

~~(c) An act of a member or manager which apparently is not for carrying on the usual way of the business or affairs of the limited liability company does not bind the limited liability company unless authorized in accordance with the terms of the articles of organization or operating agreement, at the time of the transaction or at any other time. Unless otherwise provided in the articles of organization or operating agreement, a transaction not in the ordinary course of the business or affairs of the limited liability company must be approved by a majority, by number, of the members of the limited liability company.~~

Sec. 27. K.S.A. 17-7695 is hereby amended to read as follows: 17-7695. (a) An operating agreement may provide for classes or groups of managers 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 managers 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 managers. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the operating agreement a class or group of limited liability company interests that was not previously outstanding.

(b) An operating agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis. Unless otherwise provided in ~~the~~ *an* operating agreement, if more than one manager is appointed, all managers shall have an equal vote per capita.

(c) An operating agreement ~~which grants a right to vote~~ may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) Unless otherwise provided in an operating agreement, *meetings of managers may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.* Unless otherwise provided in an operating agreement, on any matter that is to be voted on, *consented to or approved by the* managers, the managers may take such action without a meeting, without prior notice and without a vote, ~~if a consent or consents in writing, setting forth the action so taken, shall be signed by the~~ *if consented to, in writing or by electronic transmission, by* managers having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting *at which all managers entitled to vote thereon were present and voted.* Unless otherwise provided in an operating agreement, on any matter that is to be voted on by managers, the managers may vote in person or by proxy, *and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law.* Unless otherwise

provided in an operating agreement, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

~~(c) When, under the provisions of the Kansas revised limited liability company act or under the provisions of the articles of organization or operating agreement of a limited liability company, notice is required to be given to a manager of a limited liability company having a manager or managers, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.~~

Sec. 28. K.S.A. 17-7697 is hereby amended to read as follows: 17-7697. A member ~~or~~, manager *or liquidating trustee* of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon ~~such~~ information, opinions, reports or statements presented ~~to~~ *by another manager, member or liquidating trustee, an officer or employee of the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, members or managers,* or by any other person; as to matters the member ~~or~~, manager *or liquidating trustee* reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company, *or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay such claims and obligations,* or any other facts pertinent to the existence and amount of assets from which distributions to members *or creditors* might properly be paid.

Sec. 29. K.S.A. 17-7698 is hereby amended to read as follows: 17-7698. Unless otherwise provided in the operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one or more other persons the member’s or manager’s, as the case may be, rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the operating agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, *as the case may be, of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager,* as the case may be, of the limited liability company.

Sec. 30. K.S.A. 17-76,100 is hereby amended to read as follows: 17-76,100. (a) Except as provided in an operating agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value ~~as stated in the records of the limited liability company~~, of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the operating agreement or applicable law.

(b) Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only by consent of all the members. Notwithstanding the compromise, a

creditor of a limited liability company who extends credit, after the entering into of an operating agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(c) An operating agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of ~~the member's~~ *that* limited liability company interest, forfeiture of the *defaulting* member's limited liability company interest, the lending by other members of the amount necessary to meet the *defaulting* member's commitment, a fixing of the value of the *defaulting* member's limited liability company interest by appraisal or by formula and redemption or sale of the ~~member's~~ limited liability company interest at such value, or other penalty or consequence.

Sec. 31. K.S.A. 17-76,103 is hereby amended to read as follows: 17-76,103. No obligation of a member or manager of a limited liability company to the limited liability company, *or to a member or manager of the limited liability company*, arising under the operating agreement or a separate agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager, shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any such obligation in any action.

Sec. 32. K.S.A. 17-76,104 is hereby amended to read as follows: 17-76,104. Except as provided in ~~this act~~ *K.S.A. 17-76,104 through 17-76,110, and amendments thereto*, to the extent and at the times or upon the happening of the events specified in an operating agreement, a member is entitled to receive from a limited liability company distributions before the member's resignation from the limited liability company and before the dissolution and winding up thereof.

Sec. 33. K.S.A. 17-76,105 is hereby amended to read as follows: 17-76,105. A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in *an operating agreement* and in accordance with the ~~limited liability company operating agreement~~. An operating agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that an operating agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates an operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning manager.

Sec. 34. K.S.A. 17-76,106 is hereby amended to read as follows: 17-76,106. (a) A member may resign from a limited liability company only at the time or upon the happening of events specified in *an operating agreement* and in accordance with the operating agreement. Notwithstanding anything to the contrary under applicable law, unless ~~the an~~ *an operating agreement* provides otherwise, a member may *not* resign from a limited liability company prior to the dissolution and winding up of the limited liability company. ~~Upon resignation the member shall be deemed to be an assignee and shall have only the rights of an assignee. The resigned member is not released from the member's liability, if any, to a limited liability company. Notwithstanding anything to the contrary under~~

applicable law, the operating agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

(b) *Unless otherwise provided in an operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 2014, shall continue to be governed by this section as in effect on June 30, 2014, and shall not be governed by this section.*

Sec. 35. K.S.A. 17-76,107 is hereby amended to read as follows: 17-76,107. (a) Except as provided in ~~this act~~ K.S.A. 17-76,104 through 17-76,110, and amendments thereto, upon resignation any resigning member is entitled to receive any distribution to which ~~the such~~ member is entitled under ~~the an~~ operating agreement; ~~and, if not otherwise provided in the an operating agreement, the resigning such member is not~~ entitled to receive, *within a reasonable time after resignation*, the fair value of ~~the such member's limited liability company interest until the dissolution and winding up of~~ *as of the date of resignation based upon such member's right to share in distributions from the limited liability company. All distributions to a resigned member shall be subject to the provisions of K.S.A. 17-76,108, 17-76,109 and 17-76,110, and amendments thereto.*

(b) *Unless otherwise provided in an operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 2014, shall continue to be governed by this section in effect on June 30, 2014, and shall not be governed by this section.*

Sec. 36. K.S.A. 17-76,110 is hereby amended to read as follows: 17-76,110. (a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. *For purposes of this subsection, "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.*

(b) A member who receives a distribution in violation of subsection (a) of this section, and who knew at the time of the distribution that the distribution ~~violates~~ *violated* subsection (a) ~~of this section~~, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (a) ~~of this section~~, and who did not know at the time of the distribution that the distribution violated subsection (a) ~~of this section~~, shall not be liable for the amount of the distribution. Subject to subsection (c) ~~of this section~~, 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.

(c) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this act or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of ~~such the~~ three-year period and an adjudication of liability against such member is made in the action.

Sec. 37. K.S.A. 17-76,112 is hereby amended to read as follows: 17-76,112. (a) A limited liability company interest is assignable in whole or in part except as provided in an operating agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company, except as provided in an operating agreement ~~and upon:~~

(1) ~~The approval of all of the members of the limited liability company other than the member assigning the member's limited liability company interest, or~~

(2) ~~compliance with any procedure provided for in the operating~~

~~agreement~~ or, unless otherwise provided in the operating agreement, upon the affirmative vote or written consent of all of the members of the limited liability company. Notwithstanding anything to the contrary under applicable law, an operating agreement may provide that a limited liability company interest may not be assigned prior to the dissolution and winding up of the limited liability company.

(b) Unless otherwise provided in an operating agreement:

(1) An assignment of a limited liability company interest does not entitle the assignee to become or to exercise any rights or powers of a member;

(2) an assignment of a limited liability company interest entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(3) a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of the member's limited liability company interest. Unless otherwise provided in an operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

(c) ~~Unless otherwise provided in an operating agreement may provide that~~ a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. *An operating agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates. A limited liability company shall not have the power to issue a certificate of limited liability company interest in bearer form.*

(d) Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

(e) Unless otherwise provided in the operating agreement, a limited liability company may acquire, by purchase, redemption or otherwise, any limited liability company interest or other interest of a member or manager in the limited liability company. Unless otherwise provided in the operating agreement, any such interest so acquired by the limited liability company shall be deemed canceled.

~~(f) If the assignor of a limited liability company interest is the only member of the limited liability company at the time of the assignment, the assignee shall have the right to participate in the management of the business and affairs of the limited liability company as a member.~~

Sec. 38. K.S.A. 17-76,113 is hereby amended to read as follows: 17-76,113. (a) ~~On application to a court of competent jurisdiction by any by~~ a judgment creditor of a member ~~or of a member's assignee, the a court having jurisdiction~~ may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. ~~To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This act does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest. The rights provided by this section to the judgment creditor shall be the sole and exclusive remedy of a judgment creditor with respect to the member's limited liability company interest. judgment debtor to satisfy the judgment. To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such limited liability company interest.~~

(b) A charging order constitutes a lien on the judgment debtor's limited liability company interest.

(c) This act does not deprive a member or member's assignee of a right under exemption laws with respect to the judgment debtor's limited liability company interest.

(d) The entry of a charging order is the exclusive remedy by which a

judgment creditor of a member or of a member's assignee may satisfy a judgment out of the judgment debtor's limited liability company interest.

(e) No creditor of a member or of a member's assignee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(f) The district court shall have jurisdiction to hear and determine any matter relating to any such charging order.

Sec. 39. K.S.A. 17-76,114 is hereby amended to read as follows: 17-76,114. (a) An assignee of a limited liability company interest may become a member ~~as provided in an operating agreement and upon:~~

~~(1) The approval of all of the members of the limited liability company other than the member assigning the member's limited liability company interest; or~~

~~(2) compliance with any procedure provided for in the operating agreement.~~

(1) As provided in the operating agreement; or

(2) unless otherwise provided in the operating agreement, upon the affirmative vote or written consent of all of the members of the limited liability company.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under an operating agreement and this act. Notwithstanding the foregoing, unless otherwise provided in an operating agreement, an assignee who becomes a member is liable for the obligations of the ~~assignee's~~ assignor to make contributions as provided in K.S.A. 17-76,100, and amendments thereto, but shall not be liable for the obligations of the ~~assignee's~~ assignor under ~~any other provision of this act~~ K.S.A. 17-76,104 through 17-76,110, and amendments thereto. However, the assignee is not obligated for liabilities, including the obligations of the ~~assignee's~~ assignor to make contributions as provided in K.S.A. 17-76,100, and amendments thereto, unknown to the assignee at the time the assignee became a member and which could not be ascertained from an operating agreement.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from ~~the assignor's~~ liability to a limited liability company under ~~any other provision of this act~~ K.S.A. 17-7699 through 17-76,110, and amendments thereto.

Sec. 40. K.S.A. 17-76,115 is hereby amended to read as follows: 17-76,115. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's personal representative ~~shall have~~ *may exercise* all of the ~~member's~~ *member's* rights ~~of an assignee of the member's interest, unless the deceased or incompetent member is the only member of the limited liability company, in which case the member's personal representative shall have the right to participate in the management of the business and the affairs of the limited liability company as a member.~~ *for the purpose of settling the member's estate or administering the member's property, including any power under an operating agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its personal representative.*

Sec. 41. K.S.A. 17-76,116 is hereby amended to read as follows: 17-76,116. (a) A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time specified in an operating agreement, but if no such time is set forth in the operating agreement, then the limited liability company shall have a perpetual existence;

(2) upon the happening of events specified in an operating agreement;

(3) unless otherwise provided in an operating agreement, upon the *affirmative vote or* written consent of the members of the limited liability company; or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than ~~50%~~ $\frac{2}{3}$ of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate;

(4) at any time there are no members, provided that, *the limited liability company is not dissolved and is not required to be wound up if:*

(A) ~~Unless otherwise provided in an operating agreement, the limited liability company is not dissolved and is not required to be wound up if,~~ within 90 days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or ~~the personal representative's~~ *its* nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, *except that an operating agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or*

(B) *a member is admitted to the limited liability company in the manner provided for in the operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the operating agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company; or*

(5) the entry of a decree of judicial dissolution under K.S.A. 17-76,117, and amendments thereto.

(b) Unless otherwise provided in an operating agreement, the death, retirement, *resignation*, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution, ~~unless within 90 days following the occurrence of any such event, the remaining members of the limited liability company or, if there is more than one class or group of members, then the remaining members in each class or group of members, in either case, by members who own more than 50% of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, agree in writing to dissolve the limited liability company.~~

Sec. 42. K.S.A. 17-76,117 is hereby amended to read as follows: 17-76,117. (a) A limited liability company may be dissolved involuntarily by order of the district court for the county in which the registered office of the limited liability company is located in an action filed by the attorney general when it is established that the limited liability company:

- (1) Has procured its articles of organization through fraud;
- (2) has exceeded the authority conferred upon it by law;
- (3) has committed a violation of any provision of law whereby it has forfeited its articles of organization;
- (4) has carried on, conducted or transacted its business in a persistently fraudulent or illegal manner; or
- (5) by the abuse of its powers contrary to the public policy of the state, has become liable to be dissolved.

(b) If the business of the limited liability company is suffering or is threatened with irreparable injury because the members of a limited liability company, or the managers of a limited liability company having more than one manager, are so deadlocked respecting the management of the affairs of the limited liability company that the requisite vote for action cannot be obtained and the members are unable to terminate such deadlock, then any member or members in the aggregate owning at least 25% of the outstanding interests in either capital or profits and losses in the limited liability company may file with the district court a petition stating that such member or members desire to dissolve the limited lia-

bility company and to dispose of the assets thereof in accordance with a plan to be agreed upon by the members or as determined by the district court in the absence of such agreement. Such petition shall have attached thereto a copy of a proposed plan of dissolution and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to all of the other members of the limited liability company at least 30 days before the filing of the petition and that the members having the requisite vote required to cause dissolution under the operating agreement have failed or refused to consent to such plan. Unless a ~~majority in interest of the members (who own more than $\frac{2}{3}$ of the then current percentage or other interest in profits of the limited liability company owned by all members, or if there is more than one class or group of members, then by each class or group,~~ or such other number of members having the requisite vote to cause dissolution as the operating agreement may provide), file with the district court within the time period for the answer date of the petition, an answer and a certificate stating that they have agreed on either the petitioner's plan, or a modification or alternative thereof, then the district court shall order that such limited liability company be dissolved, if the district court determines that such irreparable injury and deadlock exists. In any proceeding under this section, the court may appoint one or more trustees or receivers with all the powers and title of a trustee or receiver appointed under K.S.A. 17-6808, and amendments thereto, to administer and wind up the limited liability company's affairs and may grant such other relief as the court deems equitable.

Sec. 43. K.S.A. 17-76,118 is hereby amended to read as follows: 17-76,118. (a) Unless otherwise provided in the operating agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50% of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the district court upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, *or the member's* personal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(b) Upon dissolution of a limited liability company and until the filing of a certificate of ~~dissolution~~ *cancellation* as provided in K.S.A. 17-7675, and amendments thereto, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of ~~member~~ *members* and managers *and* without imposing liability on a liquidating trustee.

Sec. 44. K.S.A. 17-76,119 is hereby amended to read as follows: 17-76,119. (a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company—~~(, whether by payment or the making of reasonable provision for payment thereof),~~ other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under K.S.A. 17-76,104 or 17-76,107, and amendments thereto;

(2) unless otherwise provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions under K.S.A. 17-76,104 or 17-76,107, and amendments thereto;

(3) unless otherwise provided in an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(b) A limited liability company which has dissolved shall:

(1) Pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured ~~claims and obligations contractual claims~~, known to the limited liability company ~~and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown.~~;

(2) *make such provision as will be reasonably likely to be sufficient to provide compensation for any claim against the limited liability company which is the subject of a pending action, suit or proceeding to which the limited liability company is a party; and*

(3) *make such provision as will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on facts known to the limited liability company, are likely to arise or to become known to the limited liability company within 10 years after the date of dissolution.*

If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims ~~and obligations~~ of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in ~~an~~ the operating agreement, any remaining assets shall be distributed as provided in this act. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by ~~reasons~~ *reason* of such person's actions in winding up the limited liability company.

(c) *A member who receives a distribution in violation of subsection (a) and who knew at the time of the distribution that the distribution violated subsection (a), shall be liable to the limited liability company for the amount of the distribution. 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 subsection (a) and who did not know at the time of the distribution that the distribution violated subsection (a), shall not be liable for the amount of the distribution. Subject to subsection (d), 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.*

(d) *Unless otherwise agreed, a member who receives a distribution from a limited liability company to which this section applies shall have no liability under this act or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the three-year period and an adjudication of liability against such member is made in the action.*

(e) *K.S.A. 17-76,110, and amendments thereto, shall not apply to a distribution to which this section applies.*

Sec. 45. K.S.A. 17-76,121 is hereby amended to read as follows: 17-76,121. Before doing business in the state of Kansas, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall submit to the secretary of state, together with payment of the fee required by this act, an original copy executed by a member or manager, together with a duplicate copy, of an application for registration as a foreign limited liability company, setting forth:

(a) The name of the foreign limited liability company;

(b) the state or other jurisdiction or country where organized, the date of its organization and a statement issued by an appropriate authority in that jurisdiction or by a third-party agent authorized by the secretary of state that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;

(c) the nature of the business or purposes to be conducted or promoted in the state of Kansas;

(d) the address of the registered office and the name and address of

the resident agent for service of process required to be maintained by this act;

(e) an irrevocable written consent of the foreign limited liability company that actions may be commenced against it in the proper court of any county where there is proper venue by the service of process on the secretary of state as provided for in K.S.A. 60-304, and amendments thereto, and stipulating and agreeing that such service shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon ~~the general partners~~ *a member of the foreign limited liability company, if such foreign limited liability company is member-managed, or upon a manager of the foreign limited liability company, if such foreign limited liability company is manager-managed;*

(f) the name and business, residence or mailing address of each of the members or, if managed by managers, the name and business, residence or mailing address of each of the managers; and

(g) the date on which the foreign limited liability company first did, or intends to do, business in the state of Kansas.

~~A person shall not be deemed to be doing business in the state of Kansas solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.~~

Sec. 46. K.S.A. 17-76,121a is hereby amended to read as follows: 17-76,121a. (a) Activities of a foreign limited liability company which do not constitute doing business within the meaning of K.S.A. 17-76,121, and amendments thereto, include:

- (1) Maintaining, defending or settling an action or proceeding;
- (2) holding meetings *of its members or managers* or carrying on any other activity concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange ~~and~~ or registration of the company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) *selling, by contract consummated outside the state of Kansas, and agreeing, by the contract, to deliver into the state of Kansas machinery, plants or equipment, the construction, erection or installation of which within the state requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;*
- ~~(7)-(8)~~ *creating, as borrower or lender, or acquiring indebtedness; mortgages or security interests with or without a mortgage or other security interest in real or personal property;*
- ~~(8) securing or~~ *(9) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;*
- ~~(9)-(10)~~ *conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of like nature; and*
- ~~(10)-(11)~~ *transacting business in interstate commerce.*

~~(b) The ownership in this state of income producing real property or tangible personal property, other than property excluded under subsection (a), constitutes doing business in this state. A person shall not be deemed to be doing business in the state of Kansas solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.~~

(c) This section does not apply in determining ~~the contacts or activities that may subject~~ *whether* a foreign limited liability company *is subject* to service of process, taxation or regulation under any other law of this state.

~~(d) The provisions of this section shall be part of and supplemental to the Kansas revised limited liability company act.~~

Sec. 47. K.S.A. 17-76,122 is hereby amended to read as follows: 17-76,122. (a) If the secretary of state finds that an application for registration

conforms to law and all requisite fees have been paid, the secretary of state shall:

(1) Certify that the application has been filed in the secretary of state's office by endorsing upon the original application the word "filed" and the date and hour of the filing, and the endorsement is conclusive of the date and time of its filing in the absence of actual fraud; and

(2) file and index the endorsed application.

(b) ~~The duplicate~~ A copy of the application, similarly certified, shall be returned to the person who filed the application or that person's representative.

Sec. 48. K.S.A. 17-76,123 is hereby amended to read as follows: 17-76,123. (a) The secretary of state shall not issue a registration to a foreign limited liability company unless the name of such limited liability company is such as to distinguish it upon the records of the office of the secretary of state from the names of other limited liability companies, corporations or limited partnerships organized under the laws of this state or reserved or registered as a foreign limited liability company, foreign corporation or foreign limited partnership under the laws of this state, except that a foreign limited liability company may register under a name which is not such as to distinguish it upon the records of the office of the secretary of state from the name of other limited liability companies, corporations or limited partnerships organized under the laws of this state or reserved or registered as a foreign limited liability company, foreign corporation or foreign limited partnership under the laws of this state if:

(1) Written consent is obtained from the other *domestic or foreign* limited liability company, corporation or limited partnership and filed with the secretary of state; or

(2) it indicates as a means of identification and in its advertising within this state, the state in which the *foreign* limited liability company was formed, and the application sets forth this condition.

(b) Each foreign limited liability company shall have and maintain in the state of Kansas:

(1) A registered office which may but need not be its place of business in the state of Kansas; and

(2) a resident agent for service of process on the limited liability company, which agent may be an individual resident of the state of Kansas, a domestic corporation, a domestic limited partnership, a domestic limited liability company, a domestic business trust, or a foreign corporation, foreign limited partnership, foreign limited liability company or foreign business trust authorized to do business in the state of Kansas whose business office is identical with the limited liability company's registered office.

(c) A resident agent may change the address of the registered office of the foreign limited liability companies for which the resident agent is resident agent to another address in the state of Kansas by: (1) Paying the fee required by this act; (2) filing with the secretary of state a certificate executed by the resident agent, setting forth the names of all the foreign limited liability companies represented by the resident agent and the address at which the resident agent has maintained the registered office for each of such foreign limited liability companies; and (3) certifying to the new address to which each such registered office will be changed on a given day and at which the resident agent will thereafter maintain the registered office for each of the foreign limited liability companies recited in the certificate. Upon the filing of the certificate, the secretary of state shall furnish to the resident agent a certified copy of such certificate. Thereafter, or until further change of address, as authorized by law, the registered office in the state of Kansas of each of the foreign limited liability companies recited in the certificate shall be located at the new address of the resident agent of the company given in the certificate. Filing of the certificate shall be considered an amendment of the application of each foreign limited liability company affected by the certificate, and the foreign limited liability company shall not be required to take any further action with respect thereto, to amend its application. Any resident agent filing a certificate under this section, upon such filing, shall deliver promptly a copy of such certificate to each foreign limited liability company affected thereby. The resident agent shall fur-

nish the secretary of state one additional copy of the certificate for each limited liability company affected.

(d) The resident agent of one or more foreign limited liability companies may resign and appoint a successor resident agent by paying the fee required by this act and filing a certificate with the secretary of state, stating that the resident agent resigns as resident agent for the foreign limited liability company identified in the certificate and giving the name and address of the successor resident agent. There shall be attached to the certificate a statement executed by each affected foreign limited liability company ratifying and approving the change of resident agent. Upon the filing, the successor resident agent shall become the resident agent of those foreign limited liability companies that have ratified and approved the substitution and the successor resident agent's address, as stated in the certificate, shall become the address of each such foreign limited liability company's registered office in the state of Kansas. Filing of the certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected by the certificate, and the foreign limited liability company shall not be required to take any further action with respect thereto, to amend its application. The resident agent shall furnish the secretary of state one additional copy of the certificate for each limited liability company affected.

(e) The resident agent of one or more foreign limited liability companies may resign without appointing a successor resident agent by paying the fee required by this act and filing a certificate with the secretary of state stating that the resident agent resigns as resident agent for the foreign limited liability companies identified in the certificate, but the resignation shall not become effective until 60 days after the certificate is filed. There shall be attached to the certificate an affidavit that, at least 30 days prior to the date of the filing of the certificate, notice that the resignation of the resident agent was sent by certified or registered mail to each foreign limited liability company for which the resident agent is resigning as resident agent. The affidavit shall be sworn to by the resident agent, if an individual, or the president, a vice-president or the secretary of the resident agent, if a corporation. The affidavit shall state that the notice was sent to the principal office of each of the foreign limited liability companies within or outside the state of Kansas, if known to the resident agent or, if not, to the last known address of the attorney or other individual at whose request the resident agent was appointed for the foreign limited liability company. After receipt of the notice of the resignation of its resident agent, the foreign limited liability company for which the resident agent was acting shall obtain and designate a new resident agent, to take the place of the resident agent resigning. If a foreign limited liability company fails to obtain and designate a new resident agent within 60 days after the filing by the resident agent of the certificate of resignation, that foreign limited liability company shall not be permitted to do business in the state of Kansas and its registration shall be considered canceled.

Sec. 49. K.S.A. 17-76,124 is hereby amended to read as follows: 17-76,124. If any statement in the application for registration of a foreign limited liability company was false *in any material respect* when made or any arrangements or other facts described have changed, making the application inaccurate in any *material* respect, the foreign limited liability company shall file promptly with the secretary of state a certificate, executed by an authorized person, correcting the statement, together with the fee required by this act.

Sec. 50. K.S.A. 17-76,125 is hereby amended to read as follows: 17-76,125. A foreign limited liability company may cancel its registration by filing with the secretary of state a certificate of cancellation executed by ~~the members~~ *an authorized person*, together with the fee required by this act and the annual report and annual report fee for any tax period which has ended. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in the state of Kansas.

Sec. 51. K.S.A. 17-76,126 is hereby amended to read as follows: 17-76,126. (a) A foreign limited liability company doing business in the state of Kansas may not maintain any action, suit or proceeding in the state of

Kansas until it has registered in this state and has paid to the state all fees and penalties for the years, or parts thereof, during which it did business in the state without having registered.

(b) The failure of a foreign limited liability company to register in the state of Kansas does not:

(1) Impair the validity of any contract or act of the foreign limited liability company;

(2) impair the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) prevent the foreign limited liability company from defending any action, suit or proceeding in any court of the state of Kansas.

(c) A member *or a manager* of a foreign limited liability company is not ~~personally~~ liable for the *obligations of the* foreign limited liability company solely by reason of the limited liability company's having done business in the state of Kansas without registration.

Sec. 52. K.S.A. 17-76,127 is hereby amended to read as follows: 17-76,127. The district court shall have jurisdiction to enjoin any foreign limited liability company, or any agent of a foreign limited liability company, from doing any business in the state of Kansas if the foreign limited liability company has failed to register under ~~this act~~ K.S.A. 17-76,120 through 17-76,129, and amendments thereto, or if such foreign limited liability company has secured a certificate from the secretary of state under K.S.A. 17-76,122, and amendments thereto, on the basis of false or misleading representations. The attorney general, upon the attorney general's own motion or upon the relation of proper parties, shall proceed for this purpose by petition in any county in which the foreign limited liability company is doing or has done business.

Sec. 53. K.S.A. 17-76,128 is hereby amended to read as follows: 17-76,128. Subsection ~~(c)~~ (d) of K.S.A. 17-76,128, and amendments thereto, shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

Sec. 54. K.S.A. 17-76,130 is hereby amended to read as follows: 17-76,130. A member *or an assignee of a limited liability company interest* may bring an action in the district court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

Sec. 55. K.S.A. 17-76,131 is hereby amended to read as follows: 17-76,131. In a derivative action, the plaintiff must be a member *or an assignee of a limited liability company interest* at the time of bringing the action and:

(a) At the time of the transaction of which the ~~member~~ plaintiff complains; or

(b) the ~~member's~~ plaintiff's status as a member *or an assignee of a limited liability company interest* had devolved upon the ~~member~~ plaintiff by operation of law or pursuant to the terms of an operating agreement from a person who was a member *or an assignee of a limited liability company interest* at the time of the transaction.

Sec. 56. K.S.A. 17-76,133 is hereby amended to read as follows: 17-76,133. If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of any such action, the ~~district~~ court may award the plaintiff reasonable expenses, including reasonable ~~attorney~~ attorney's fees, from any recovery in any such action or from a limited liability company.

Sec. 57. K.S.A. 17-76,134 is hereby amended to read as follows: 17-76,134. (a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(b) It is the policy of this act to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(c) To the extent that, at law or in equity, a member or manager or other person has duties ~~(including fiduciary duties) and liabilities relating thereto,~~ to a limited liability company or to another member or manager: *or to another person that is a party to or is otherwise bound by an operating agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the operating*

agreement, except that the operating agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

~~(1) any such (d) Unless otherwise provided in an operating agreement, a member or manager or other person acting under an operating agreement shall not be liable to the a limited liability company or to any such other another member or; manager or to another person who is a party to or is otherwise bound by an operating agreement for breach of fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the operating agreement; and~~

~~(2) The member's or manager's or other person's duties and liabilities may be expanded or restricted by provisions in an operating agreement.~~

(e) An operating agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including fiduciary duties, of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by an operating agreement, except that an operating agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(f) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to only the singular.

(g) K.S.A. 84-9-406 and 84-9-408, and amendments thereto, do not apply to any interest in a limited liability company, including all rights, powers and interests arising under an operating agreement or this act. This provision prevails over K.S.A. 84-9-406 and 84-9-408, and amendments thereto.

(h) Action validly taken pursuant to one provision of this act shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this act but fails to satisfy one or more requirements prescribed by such other provision.

(i) An operating agreement that provides for the application of Kansas law shall be governed by and construed under the laws of the state of Kansas in accordance with its terms.

Sec. 58. K.S.A. 17-76,136 is hereby amended to read as follows: 17-76,136. (a) The secretary of state shall charge each domestic and foreign limited liability company the following fees:

(1) A fee of \$20 for issuing or filing and indexing any of the following documents:

- (A) A certificate of amendment of articles of organization;
- (B) a restated articles of organization;
- (C) a certificate of cancellation;
- (D) a certificate of change of location of registered office or resident agent;
- (E) a certificate of merger; ~~or consolidation or conversion;~~ and
- (F) any certificate, affidavit, agreement or any other paper provided for in this act, for which no different fee is specifically prescribed;

(2) a fee of \$7.50 for each certified copy plus a fee per page, if the secretary of state supplies the copies, in an amount fixed by the secretary of state and approved by the director of accounts and reports for copies of corporate documents under K.S.A. 45-204, and amendments thereto;

(3) a fee of \$7.50 for each certificate of good standing and certificate of fact issued by the secretary of state;

(4) a fee of \$5 for a report of record search, but furnishing the following information shall not be considered a record search and no charge shall be made therefor: Name of the limited liability company and the address of its registered office; name and address of the resident agent; the state of the limited liability company's formation; the date of filing of its articles of organization or annual report; and date of expiration; and

(5) for photocopies of instruments on file or prepared by the secretary of state's office and which are not certified, a fee per page in an amount fixed by the secretary of state and approved by the director of accounts and reports for copies of corporate documents under K.S.A. 45-204, and amendments thereto.

(b) Every limited liability company hereafter formed in this state shall pay to the secretary of state, at the time of filing its articles of organization, an application and recording fee of \$150.

(c) At the time of filing its application to do business, every foreign limited liability company shall pay to the secretary of state an application and recording fee of \$150.

(d) *The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of reinstatement of a corporation's articles of incorporation.*

Sec. 59. K.S.A. 17-76,137 is hereby amended to read as follows: 17-76,137. All provisions of this act may be ~~amended~~ *altered* from time to time or repealed and all rights of members and managers are subject to this reservation. *Unless expressly stated to the contrary in this act, all amendments of this act shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment.*

Sec. 60. K.S.A. 17-76,139 is hereby amended to read as follows: 17-76,139. (a) Every limited liability company organized under the laws of this state shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice of its different tax period in writing to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the following information:

- (1) The name of the limited liability company; and
- (2) a list of the members owning at least 5% of the capital of the *limited liability company*, with the post office address of each.

(b) Every foreign limited liability company shall make an annual report in writing to the secretary of state, stating the prescribed information concerning the limited liability company at the close of business on the last day of its tax period next preceding the date of filing. If the limited liability company's tax period is other than the calendar year, it shall give notice in writing of its different tax period to the secretary of state prior to December 31 of the year it commences the different tax period. The annual report shall be filed at the time prescribed by law for filing the limited liability company's annual Kansas income tax return. The annual report shall be made on a form prescribed by the secretary of state. The report shall contain the name of the limited liability company.

(c) ~~The annual report required by this section shall be dated, signed by a member of the limited liability company under penalty of perjury and forwarded to the~~ *executed by one or more authorized persons, and filed with the secretary of state. The execution of such annual report by a person who is authorized by this act to execute such annual report, upon filing such annual report with the secretary of state, constitutes an oath or affirmation, under penalties of perjury that, to the best of such person's knowledge and belief, the facts stated therein are true.* At the time of filing the report, the limited liability company shall pay to the secretary of state an annual report fee in an amount equal to \$40.

(d) The provisions of K.S.A. 17-7509, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required annual report fee, and the provisions of subsection (a) of K.S.A. 17-7510, and amendments thereto, relating to penalties for failure of a corporation to file an annual report or pay the required annual report fee, shall be applicable to the articles of organization of any domestic limited liability company or to the authority of any foreign limited liability company which fails to file its annual report or pay the annual report fee within 90 days of the time prescribed in this section for filing and paying the same. Whenever the articles of organization of a domestic limited liability company or the authority of any foreign limited liability company are forfeited for failure to file an annual report or to pay the required annual report fee, the domestic limited liability company or the authority of a foreign limited liability company may be reinstated by filing a certificate of reinstatement, ~~in the manner and form to be prescribed by the secretary of state pursuant to section 65, and amendments thereto,~~ and paying to the secretary of state all fees, including any penalties

thereon, due to the state. ~~The fee for filing a certificate of reinstatement shall be the same as that prescribed by K.S.A. 17-7506, and amendments thereto, for filing a certificate of reinstatement of a corporation's articles of incorporation.~~

~~(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the forfeiture and the company may resume its business as if the forfeiture had never occurred.~~

~~(f)~~(e) No limited liability company shall be required to file its first annual report under this act, or pay any annual report fee required to accompany such report, unless such limited liability company has filed its articles of organization or application for authority at least six months prior to the last day of its tax period.

~~(g)~~(f) All copies of applications for extension of the time for filing income tax returns submitted to the secretary of state pursuant to law shall be maintained by the secretary of state in a confidential file and shall not be disclosed to any person except as authorized pursuant to the provisions of K.S.A. 79-3234, and amendments thereto, a proper judicial order, or subsection ~~(h)~~ (g). All copies of such applications shall be preserved for one year and thereafter until the secretary of state orders that they be destroyed.

~~(h)~~(g) A copy of such application shall be open to inspection by or disclosure to any person who was a member of such limited liability company during any part of the period covered by the extension.

Sec. 61. K.S.A. 17-76,140 is hereby amended to read as follows: 17-76,140. From and after ~~January 1, 2000~~ *July 1, 2014*, this act shall be applicable to all limited liability companies formed in Kansas, whether formed before or after such date.

Sec. 62. K.S.A. 2013 Supp. 17-76,143 is hereby amended to read as follows: 17-76,143. (a) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers or limited liability company interests having 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.

(b) Notwithstanding anything to the contrary set forth in this section 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 the records maintained for any such 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 a particular 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. The fact that the articles of organization contain the foregoing notice of the limitation on liabilities of a series and a certificate of designation for a series is on file in the office of the secretary of state shall constitute notice of such limitation on liabilities of a series. A series with limited liability shall be treated as a separate entity to the extent set forth in the articles of organization. Each series with limited liability may, in its own name, contract, hold title to assets, grant security interests, sue and be sued and otherwise conduct business and exercise the powers of a limited liability company under this act. The limited liability company and any of its series may elect to consolidate their operations as a single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect to contract jointly or elect to be treated as a single business for purposes of qualification to do business

in this or any other state. Such elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract.

(c) Except in the case of a foreign limited liability company that has adopted an assumed name pursuant to K.S.A. 17-76,123, and amendments thereto, the name of the series with limited liability must contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted an assumed name pursuant to K.S.A. 17-76,123, and amendments thereto, the name of the series with limited liability must contain the entire name under which the foreign limited liability company has been admitted to transact business in this state.

(d) Upon the filing of the certificate of designation with the secretary of state setting forth the name of each series with limited liability, the series' existence shall begin, and copies of the filed certificate of designation marked with the filing date shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed have been complied with and that the series has been or shall be legally organized and formed under this act. If different from the limited liability company, the certificate of designation for each series shall list the names of the members if the series is member managed or the names of the managers if the series is manager managed. The name of a series with limited liability under subsection (b) may be changed by filing with the secretary of state a certificate of designation identifying the series whose name is being changed and the new name of such series. If not the same as the limited liability company, the names of the members of a member managed series or of the managers of a manager managed series may be changed by filing a new certificate of designation with the secretary of state. A series with limited liability under subsection (b) may be dissolved by filing with the secretary of state a certificate of designation identifying the series being dissolved or by the dissolution of the limited liability company as provided in subsection (m). Certificates of designation may be executed by the limited liability company or any manager, person or entity designated in the operating agreement for the limited liability company.

(e) A series of a limited liability company will be deemed to be in good standing as long as the limited liability company is in good standing.

(f) The ~~registered~~ *resident* agent and registered office for the limited liability company in Kansas shall serve as the agent and office for service of process in Kansas for each series.

(g) 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 of additional classes or groups of members or managers associated with the 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 the series.

(h) A series may be managed by either the member or members associated with the series or by a manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(i) 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 the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(j) Except to the extent modified in this section, the provisions of this act which are generally applicable to limited liability companies, their managers, members and transferees shall be applicable to each particular series with respect to the operation of such series.

(k) Except as otherwise provided in an operating agreement, any event under this 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.

(l) Except as otherwise provided in an operating agreement, any event under this 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 termination of the series, regardless of whether such member was the last remaining member associated with such series.

(m) 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 established in accordance with subsection (b) shall not affect the limitation on liabilities of such series provided by subsection (b). A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under article 76 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto.

(n) If a limited liability company with the ability to establish a series does not register to do business in a foreign jurisdiction for itself and certain of its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(o) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers or duties and has limited the liabilities of such series so that the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that 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 are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on their own behalf may register to do business in the state in accordance with the provisions of K.S.A. 17-76,121, and amendments thereto. The limitation of liability shall be so stated on the application for admission as a foreign limited liability company and a certificate of designation shall be filed for each series being registered to do business in the state by the limited liability company. Unless otherwise provided in the operating agreement, the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series of such a foreign limited liability company shall be 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 none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to such a foreign limited liability company generally or any other series thereof shall be enforceable against the assets of such series.

New Sec. 63. When the articles of organization of any limited liability company formed under this act shall be canceled by the filing of a certificate of cancellation pursuant to K.S.A. 17-7675, and amendments thereto, the district court, on application of any creditor, member or manager of the limited liability company, or any other person who shows good cause therefor, at any time, may either appoint one or more of the managers of the limited liability company to be trustees, or appoint one or more persons to be receivers, of and for the limited liability company, to take charge of the limited liability company's property, and to collect the debts and property due and belonging to the limited liability company, with the power to prosecute and defend, in the name of the limited liability company, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the limited liability company, if in being, that may be necessary for the final settlement of the unfinished business of the limited liability company. The powers of the trustees or receivers may be continued as long as the district court shall think necessary for the purposes aforesaid.

New Sec. 64. Notwithstanding the occurrence of an event set forth

in subsections (a)(1) through (a)(4) of K.S.A. 17-76,116, and amendments thereto, the limited liability company shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation with the secretary of state, the limited liability company is continued, effective as of the occurrence of such event, pursuant to the affirmative vote or written consent of all remaining members of the limited liability company or the personal representative of the last remaining member of the limited liability company if there is no remaining member, and any other person whose approval is required under the operating agreement to revoke a dissolution pursuant to this section, except that if the dissolution was caused by a vote or written consent, the dissolution shall not be revoked unless each member and other person, or their respective personal representatives, who voted in favor of, or consented to, the dissolution has voted or consented in writing to continue the limited liability company. If there is no remaining member of the limited liability company and the personal representative of the last remaining member votes in favor of or consents to the continuation of the limited liability company, such personal representative shall be required to agree in writing to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member.

New Sec. 65. (a) A domestic limited liability company whose articles of organization or a foreign limited liability company whose authority to do business has been canceled pursuant to subsection (d) or (e) of K.S.A. 17-7666 or subsection (e) of 17-76,123, and amendments thereto, or whose articles of organization or authority to do business has been forfeited pursuant to subsection (d) of K.S.A. 17-76,139, and amendments thereto, may be reinstated by filing with the secretary of state a certificate of reinstatement accompanied by the payment of the fee required by subsection (d) of K.S.A. 17-76,136, and amendments thereto, and payment of the annual report fees due under subsection (c) of K.S.A. 17-76,139, and amendments thereto, and all penalties and interest thereon due at the time of the cancellation or forfeiture of its articles of organization or authority to do business. The certificate of reinstatement shall set forth:

(1) The name of the limited liability company at the time its articles of organization or authority to do business was canceled or forfeited and, if such name is not available at the time of reinstatement, the name under which the limited liability company is to be reinstated;

(2) the address of the limited liability company's registered office in the state of Kansas and the name and address of the limited liability company's resident agent in the state of Kansas;

(3) a statement that the certificate of reinstatement is filed by one or more persons authorized to execute and file the certificate of reinstatement to reinstate the limited liability company; and

(4) any other matters the persons executing the certificate of reinstatement determine to include therein.

(b) The certificate of reinstatement shall be deemed to be an amendment to the articles of organization or application for registration of the limited liability company, and the limited liability company shall not be required to take any further action to amend its articles of organization or application for registration under K.S.A. 17-7674 or 17-76,124, and amendments thereto, with respect to the matters set forth in the certificate of reinstatement.

(c) Upon the filing of a certificate of reinstatement, a limited liability company shall be reinstated with the same force and effect as if its articles of organization or authority to do business had not been canceled or forfeited pursuant to subsection (d) or (e) of K.S.A. 17-7666, and amendments thereto, subsection (e) of K.S.A. 17-76,123, and amendments thereto, or subsection (d) of K.S.A. 17-76,139, and amendments thereto. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed by the limited liability company, its members, managers, employees and agents during the time when its articles of organization or authority to do business was canceled or forfeited pursuant to subsection (d) or (e) of K.S.A. 17-7666, and amendments thereto, subsection (e) of K.S.A. 17-76,123, and amendments thereto, or subsection

(d) of K.S.A. 17-76,139, and amendments thereto, with the same force and effect and to all intents and purposes as if the articles of organization or authority to do business had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the limited liability company at the time its articles of organization or authority to do business was canceled or forfeited pursuant to subsection (d) or (e) of K.S.A. 17-7666, and amendments thereto, subsection (e) of K.S.A. 17-76,123, and amendments thereto, or subsection (d) of K.S.A. 17-76,139, and amendments thereto, or which were acquired by the limited liability company following the cancellation or forfeiture of its articles of organization or authority to do business pursuant to subsection (d) or (e) of K.S.A. 17-7666, and amendments thereto, subsection (e) of K.S.A. 17-76,123, and amendments thereto, or subsection (d) of K.S.A. 17-76,139, and amendments thereto, and which were not disposed of prior to the time of its reinstatement, shall be vested in the limited liability company after its reinstatement as fully as they were held by the limited liability company at, and after, as the case may be, the time its articles of organization or authority to do business was canceled or forfeited pursuant to subsection (d) or (e) of K.S.A. 17-7666, and amendments thereto, subsection (e) of K.S.A. 17-76,123, and amendments thereto, or subsection (d) of K.S.A. 17-76,139, and amendments thereto. After its reinstatement, the limited liability company shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its members, managers, employees and agents prior to its reinstatement as if its articles of organization or authority to do business had at all times remained in full force and effect.

Sec. 66. K.S.A. 2013 Supp. 84-9-406 is hereby amended to read as follows: 84-9-406. (a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge the account debtor's obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge the account debtor's obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

- (1) If it does not reasonably identify the rights assigned;
- (2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or
- (3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
 - (B) a portion has been assigned to another assignee; or
 - (C) the account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e), *subsection (g) of K.S.A. 17-76,134*, K.S.A. 84-2a-303 and K.S.A. 2013 Supp. 84-9-407, and amendments thereto, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

- (1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security

interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under K.S.A. 2013 Supp. 84-9-610, and amendments thereto, or an acceptance of collateral under K.S.A. 2013 Supp. 84-9-620, and amendments thereto.

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in *subsection (g) of K.S.A. 17-76,134*, K.S.A. 84-2a-303 and K.S.A. 2013 Supp. 84-9-407, and amendments thereto, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 67. K.S.A. 2013 Supp. 84-9-408 is hereby amended to read as follows: 84-9-408. (a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) and *subsection (g) of K.S.A. 17-76,134, and amendments thereto*, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under K.S.A. 2013 Supp. 84-9-610, and amendments thereto, or an acceptance of collateral under K.S.A. 2013 Supp. 84-9-620, and amendments thereto.

(c) **Legal restrictions on assignment generally ineffective.** *Ex-*

cept as otherwise provided in and subsection (g) of K.S.A. 17-76,134, and amendments thereto, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations of this state.

Sec. 68. K.S.A. 17-7662, 17-7664, 17-7666, 17-7668, 17-7670, 17-7671, 17-7672, 17-7673, 17-7674, 17-7676, 17-7677, 17-7679, 17-7680, 17-7683, 17-7686, 17-7687, 17-7688, 17-7689, 17-7690, 17-7691, 17-7693, 17-7695, 17-7697, 17-7698, 17-76,100, 17-76,103, 17-76,104, 17-76,105, 17-76,106, 17-76,107, 17-76,110, 17-76,112, 17-76,113, 17-76,114, 17-76,115, 17-76,116, 17-76,117, 17-76,118, 17-76,119, 17-76,121, 17-76,121a, 17-76,122, 17-76,123, 17-76,124, 17-76,125, 17-76,126, 17-76,127, 17-76,128, 17-76,130, 17-76,131, 17-76,133, 17-76,134, 17-76,136, 17-76,137, 17-76,139 and 17-76,140 and K.S.A. 2013 Supp. 17-7663, 17-7675, 17-7678, 17-7681, 17-7682, 17-76,143, 84-9-406 and 84-9-408 are hereby repealed.

Sec. 69. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.