

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2039**

As Agreed to April 3, 2019

Brief*

HB 2039 would amend the Charitable Organizations and Solicitations Act (COSA) to exempt from its registration requirement any charitable organization that is an animal shelter licensed pursuant to the Kansas Pet Animal Act.

The bill also would create and amend law related to limited liability companies (LLCs) in the Kansas Revised Limited Liability Company Act (RLLCA), Business Entity Standard Treatment Act (BEST Act), and other statutes, as follows.

Series LLCs

The bill would create and amend law related to series LLCs, as follows. (*Note:* Series LLCs were originally implemented in the RLLCA by 2012 Sub. for HB 2207.)

Merger or Consolidation of Series LLCs [Sec. 3]

The bill would create law effective July 1, 2020, allowing merger or consolidation by one or more series with or into one or more other series of the same LLC with such series as the agreement would provide being the surviving or resulting series.

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Unless otherwise provided by the operating agreement, merger or consolidation would be required to be approved by the vote of the members of each series that is to merge or consolidate who own more than 50 percent of the then-current percentage or other interest in the profits of such series owned by all the members of the series.

The bill would allow exchange or conversion of rights or securities of or interests in the constituent series, or would allow them to be canceled or remain outstanding. An agreement of merger or consolidation could be terminated or amended pursuant to a provision for such in the agreement.

The surviving or resulting series would be required to file with the Secretary of State a certificate of merger or consolidation executed by authorized persons, which would be required to include:

- The name of the series to be merged or consolidated and the name of the LLC that formed the series;
- That a merger or consolidation agreement has been approved by each series that is to merge or consolidate;
- The name of the surviving or resulting series;
- Any amendment to the certificate of designation of the surviving or resulting series to change the name of the surviving series through the merger;
- The future effective date or time certain, if not effective upon filing;
- That the agreement is on file at a place of business of the surviving or resulting series or the LLC company that formed the series, with the address; and

- That a copy of the agreement will be furnished upon request and without cost to any member of any merging or consolidating series.

Unless otherwise provided in the certificate, the merger or consolidation would be effective upon the filing of the certificate with the Secretary of State.

A certificate of merger or consolidation would act as a certificate of cancellation of the certificate of designation of the series that is not the surviving or resulting series, and a certificate amending the name of the surviving or resulting series would be deemed to be an amendment to the certificate of designation of the surviving or resulting series, with no further action required for such amendment. Any requirement in this section that a certificate of merger or consolidation be filed would be deemed satisfied by the filing of a merger or consolidation agreement containing the information required in a certificate of merger or consolidation.

A merger or consolidation agreement could amend the operating agreement of the constituent series, and any amendment relating solely to such series would be effective at the effective time or date of the merger or consolidation. Such amendment or adoption would be effective notwithstanding any provision in the operating agreement regarding amendment, other than such a provision applicable in connection with a merger or consolidation. These provisions could not be construed to limit the accomplishment of a merger or of any of the referenced matters by any other means provided by an operating agreement, other agreement, or otherwise by law.

The bill would provide for various items upon a merger or consolidation becoming effective, including vesting of rights, privileges, powers, property, and debts and attachment and enforcement of rights of creditors, liens upon property, debts, liabilities, and duties.

Unless otherwise agreed, a merger or consolidation of a series that is not the surviving or resulting series would not require such series to wind up its affairs or pay its liabilities and distribute its assets, and the merger or consolidation would not constitute a dissolution of such series.

An operating agreement could provide that a series of the LLC shall not have the power to merge or consolidate.

Series Reinstatement [Sec. 4]

The bill would create law effective July 1, 2020, allowing a series whose certificate of designation has been canceled to be reinstated by filing with the Secretary of State a certificate of reinstatement, accompanied by payment of the required fee, annual report fee, and all penalties and interest due at the time of the cancellation. The certificate would be required to contain the name of the LLC at the time of cancellation and at the time of reinstatement, if changed; the name of the series at the time of cancellation and the name under which the series is to be reinstated, if the original name is not available; a statement that the certificate is filed by persons authorized to do so; and any other matters such persons include.

The certificate of reinstatement would be deemed to be an amendment to the certificate of designation, and upon its filing, the series would be reinstated with the same force and effect as if the certificate of designation had not been canceled. The bill would set forth the effect of reinstatement on contracts; acts; matters and things made, done, and performed by the series, its members, managers, employees, and agents during cancellation; real and personal property; all rights and interests; and liability for all contracts, acts, matters, and things made, done, or performed in its name prior to reinstatement.

Restated Certificate of Designation [Sec. 21]

Effective July 1, 2020, the bill would amend the RLLCA statute governing restated articles of organization to add provisions regarding restated certificates of designation. These provisions would allow an LLC series to integrate into a single instrument all the provisions of its certificate of designation that are then in effect and operative as a result of certificates or other instruments previously filed with the Secretary of State. The series could, at the same time, further amend its certificate of designation by adopting a restated certificate of designation.

A restated certificate of designation that restates and integrates, but does not further amend, would be specifically designated a “restated certificate of designation” and would be executed by an authorized person and filed with the Secretary of State as provided in the BEST Act. A restated certificate of designation that restates and integrates, and also further amends, would be specifically designated an “amended and restated certificate of designation” and would be executed and filed in the same manner as described above.

The bill would require a restated certificate of designation to state the name of the LLC, the present name of the series, the name under which the series was originally filed (if different), and the future effective date or time certain of the restated certificate (if not effective upon filing). The certificate also would be required to state it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates, without further amendment, and there is no discrepancy in provisions, the bill would require the certificate also state this fact.

Upon filing of the restated certificate (or upon the future effective date or time, if provided), the initial certificate of designation would be superseded, and the restated certificate would be the certificate of designation of the series, but the

original effective date of formation of the series would remain unchanged.

Any amendment or change effected in connection with the restatement and integration of a certificate of designation would be subject to any other provision of the RLLCA, not inconsistent with these provisions, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Restructuring and Amendment of Series LLC Requirements
[Sec. 39]

Effective July 1, 2020, the main statute governing series LLCs would be extensively amended, restructured, and expanded, as follows.

The bill would remove much of the current law regarding names, formation, limits on liability, certificates of designation, dissolution, standing, resident agents, management, applicability of law, and foreign LLCs.

Some provisions within the removed law would be moved or reworded (without substantive changes) within the statute, including provisions regarding:

- Formation by filing of a certificate of designation with the Secretary of State;
- Notice of limitation on liabilities provided by the articles of organization on file with the Secretary of State;
- Providing for classes or groups of members or managers and voting in an operating agreement;
- Effect of events on a member or manager of a series with regard to any other series or the LLC; and

- Dissolution of a series without dissolving the LLC or affecting the limitation on liabilities.

The bill would add numerous provisions to law governing series LLCs, as follows.

The bill would state a series may be formed by complying with this statute if an operating agreement provides for the establishment or formation of one or more series. A series would be prohibited from merging, converting, or consolidating pursuant to any section of the RLLCA, the BEST Act, or any other statute, other than pursuant to the provisions included elsewhere in the bill.

The bill would require notice of the limitation on liabilities of a series be set forth in the articles of organization of the LLC, which would be sufficient whether or not the LLC has formed any series when such notice is included in the articles of organization, without any specific series of the LLC being referenced in the notice.

The bill would add language stating current and amended language regarding limitation on liability would not restrict a series or LLC from agreeing that debts, liabilities, obligations, and expenses of the LLC may be enforceable against the assets of the series, or *vice versa*. The bill would add additional provisions regarding holding of assets associated with a series, accounting for the assets of a series, and references to assets, members, or managers of or associated with a series.

The bill would provide a series may carry on any lawful business, purpose, or activity, whether or not for profit, except for granting insurance policies, assuming insurance risks, or banking. The bill would state a series shall have the power and capacity to contract, hold title to assets, grant liens and security interests, and sue and be sued.

No member or manager of a series would be obligated personally for any debt, obligation, or liability of the series,

unless the member or manager otherwise agrees or as otherwise provided in the RLLCA.

The bill would set forth various voting provisions that may be included in an operating agreement and would state voting may be on any basis, including several specifically listed.

Unless otherwise provided in an operating agreement, the bill would vest management of a series in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, with the decision of members owning more than 50 percent of such percentage controlling. However, if an operating agreement provides for management by a manager, management would be vested in the manager accordingly, and the bill would give effect to other operating agreement provisions regarding managers. A series could have more than one manager.

The bill would add provisions regarding distributions with respect to a series, including status and remedies of a member entitled to a distribution, establishment of a record date by an operating agreement, limitations on distributions related to certain liabilities and the fair market value of the series assets, liability of a member for a distribution in certain circumstances, and the effect of these provisions on certain obligations or liabilities of members.

Unless otherwise provided in the operating agreement, a member would cease to be associated with a series and to have the rights and powers of a member of the series upon the assignment of all the members' LLC interest in the series.

The bill would state a series is dissolved and its affairs shall be wound up upon dissolution of the LLC or upon the first of the following: at the time specified in the operating agreement; upon the happening of events specified in the operating agreement; unless otherwise provided by the

operating agreement, upon the vote of series members who own two-thirds or more of the then-current percentage or other interest in the profits of such series of the LLC owned by all the members of the series; or the dissolution of the series under this statute.

Unless otherwise provided in the operating agreement, a series manager who has not wrongfully dissolved the series, or the series members or a person consented to or approved by the series members, by a vote of the members who own more than 50 percent of the then-current percentage or other interest in the profits of such series owned by all of the series members, may wind up the affairs of the series. The district court, upon cause shown, may wind up the affairs of a series and appoint a liquidating trustee upon application by certain persons. The bill would set forth the authority and requirements of the persons winding up the affairs of the series, which would not affect the liability of members or impose liability on a liquidating trustee. On application by or for a member or manager associated with a series, the district court could decree dissolution of the series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement. A series would be an association for all purposes of Kansas law, regardless of the number of members or managers.

The bill would set forth required contents of a certificate of designation filed to form an LLC series, but a certificate of designation properly filed with the Secretary of State prior to July 1, 2020, would be deemed to comply with these requirements. The bill would require the certificate of designation be executed and filed in accordance with the BEST Act and would state a certificate of designation is not an amendment to the articles of organization of the LLC.

The bill would permit amendment of a certificate of designation pursuant to requirements set forth in the bill for a certificate of amendment, but a certificate of designation properly filed with the Secretary of State prior to July 1, 2020,

changing a previously filed certificate of designation, would be deemed to be a certificate of amendment.

The bill would require a manager or member of a series who becomes aware that any statement in a certificate of designation was false when made, or that any matter has changed making the certificate false in any material respect, to promptly amend the certificate of designation. A certificate of designation could be amended at any time for any other proper purpose.

Unless otherwise provided in the RLLCA or unless a later effective date or time certain is provided in the certificate of amendment, the certificate shall be effective at the time of filing.

The bill would set forth the circumstances under which a certificate of designation shall be canceled, including by the filing of a certificate of cancellation pursuant to requirements set forth by the bill. A certificate of designation properly filed before July 1, 2020, dissolving a series would be deemed a certificate of cancellation. The bill would provide for correction of a certificate of cancellation and would prohibit the Secretary of State from issuing a certificate of good standing for a series if the certificate of designation is canceled or if the LLC has ceased to be in good standing.

The bill would specify requirements for the name of the series to be set forth in the certificate of designation.

The bill would modify the required statements related to series to be included in an application for registration as a foreign LLC.

Other Series LLC Amendments in RLLCA

The bill would amend the RLLCA definitions statute to define “series” as a designated series of members, managers, LLC interests, or assets established in accordance with the RLLCA series statute.

Effective July 1, 2020, the bill would amend RLLCA statutes regarding cancellation of articles of organization, notice by filing with the Secretary of State, fees for documents provided by the Secretary of State, and reinstatement of canceled or forfeited articles of organization to incorporate LLC series. [Secs. 17, 19, 36, and 41]

Effective July 1, 2020, the bill would amend the RLLCA statute regarding annual reports to include LLC series in its continuing requirements. Additionally, if applicable law does not prescribe a time for filing an annual Kansas income tax return for a series, the bill would require the annual report to be filed at, and its tax period would be deemed to be, the time prescribed by law for filing the annual Kansas income tax return for the LLC company to which the series is associated. [Sec. 38]

Series LLC Amendments in other Acts and Codes

The bill would amend BEST Act statutes regarding service of process and resignation of resident agents to incorporate LLC series. [Secs. 44 and 48]

Effective July 1, 2020, the bill would amend BEST Act statutes regarding LLC filings, names of covered entities, reservation of entity names, and name requirements for foreign covered entities to incorporate LLC series, merger or consolidation of series LLCs, and series LLC certificates of designation, as appropriate. [Secs. 43, 46, 47, and 49.]

The bill would amend the Code of Civil Procedure section governing service of process to provide that service

on an LLC series may be made in the same manner as existing methods of service on various corporate entities or resident agents. If service is made on the resident, managing, general, or other agent of the LLC upon which service may be made or the Secretary of State on behalf of any series, the service would be required to include the name of the LLC and the name of the series. [Sec. 50]

The bill would amend the Uniform Commercial Code (UCC) general definitions statute (effective July 1, 2020) to include a series within the definition of “person” and would amend the UCC Article 9 definitions statute to include a series of a registered organization within the definition of “registered organization,” if the series is formed or organized under the law of a single state and the statute of the state governing the series requires the public organic record of the series be filed with the state. [Secs. 51 and 52]

Statutory Public Benefit LLCs [Secs. 5-12, 18]

The bill would create [Secs. 5-12] and amend [Sec. 18] law to create a type of LLC known as a “statutory public benefit limited liability company” (SPBLLC), as follows.

Applicability [Sec. 5]

Sections 5 through 12 of the bill would apply to all SPBLLCs, and any SPBLLC would be subject to all provisions of the RLLCA except to the extent Sections 5 through 12 impose different requirements, and such requirements could not be altered in an operating agreement.

Definitions and Name [Sec. 6]

The bill would define “statutory public benefit limited liability company” as a for-profit LLC formed under and subject to the requirements of the RLLCA that is intended to

produce a public benefit or benefits and to operate in a responsible and sustainable manner. An SPBLLC would be managed in a manner balancing the members' pecuniary interests, the best interests of those materially affected by the SPBLLC's conduct, and the public benefit or benefits set forth in its articles of incorporation. Within its articles of organization, the SPBLLC would be required to identify specific public benefit or benefits to be promoted and state it is a SPBLLC.

The bill would define "public benefit" to mean a positive effect, or reduction of negative effects, on one or more categories of persons, entities, communities, or interests (other than members in their capacities as members), including various exemplary effects listed in the bill.

The bill would define "public benefit provisions" to mean the provisions of the articles of organization, an operating agreement, or both, contemplated by Sections 5 through 12.

The bill would require, if the name of the SPBLLC does not contain the term "statutory public benefit limited liability company" or the abbreviation "S.P.B.L.L.C." or designation "SPBLLC," the SPBLLC must provide advance notice to any person to whom it is issuing any LLC interest that it is an SPBLLC, unless the issuance is being made pursuant to certain provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934.

Voting Requirements [Sec. 7]

Unless otherwise provided in the operating agreement, the consent or approval of members who own at least two-thirds of the then-current percentage or other interest in the profits of the LLC owned by all members would be required to:

- Amend its articles of organization to delete or amend a provision required to comply with the above definition of SPBLLC;
- Merge, consolidate, or divide the LLC, if the resulting interests would not be in an SPBLLC with public benefit or benefits and other specified provisions comparable in all material respects to those set forth by the original LLC; or
- Cease to be an SPBLLC.

Duties [Sec. 8]

The members, managers, or other persons with authority to manage or direct the business and affairs of an SPBLLC (managing person) would be required to manage or direct the business and affairs of the SPBLLC in a manner balancing the pecuniary interests of the members, the best interests of those materially affected by the SPBLLC's conduct, and the specific public benefits set forth in the articles of organization. Unless otherwise provided by the operating agreement, such managing person would not have any liability for monetary damages for the failure to manage or direct in the manner required above.

Such managing person would have no duty, by virtue of the public benefit provisions, to any person due to such person's interest in the identified benefits or materially affected by the SPBLLC's conduct. Such managing person would be deemed to satisfy fiduciary duties to members and the SPBLLC if the managing person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

Statements [Sec. 9]

An SPBLLC would be required to provide to members, at least annually and at the time of the filing of the SPBLLC's annual report, a statement regarding the LLC's promotion of the public benefits set forth in the articles of organization and of the best interests of those materially affected by the SPBLLC's conduct. This statement would be required to include objectives established and standards adopted, as well as objective factual information based on those standards regarding the SPBLLC's success in meeting the objectives and an assessment of the SPBLLC's success in meeting the objectives and promoting the public benefits and interests. The bill would require the statement be based on a third-party standard, as defined in this new section.

An SPBLLC would be required to post its most recent statement on the public portion of its website. If the SPBLLC does not have a website, it would be required to provide a copy of the statement, without charge, to any person requesting a copy, except that compensation paid to any person and any other financial or proprietary information could be omitted from any statement publicly posted or distributed, other than a statement provided to a managing person.

The articles of organization or operating agreement could require the SPBLLC to obtain a periodic third-party certification addressing the SPBLLC's promotion of its public benefits or the best interests of those materially affected by the corporation's conduct, or both.

Derivative Lawsuit [Sec. 10]

Members of or assignees of LLC interests in an SPBLLC owning (individually or collectively), as of the date of instituting such derivative suit, at least 2 percent of the then-current percentage or other interest in the profits of the LLC, or, for an LLC with LLC interests listed on a national

securities exchange, the lesser of such percentage or LLC interests of at least \$2.0 million in market value, unless a different percentage or market value is provided by the operating agreement, may maintain a derivative lawsuit to enforce the managing and directing duties set forth in Section 8 of the bill.

Other Provisions

Section 11 would state Sections 5 through 12 shall not affect a statute or rule of law applicable to any LLC formed under the RLLCA that is not a SPBLLC. Section 12 would state Sections 5 through 12 shall not be construed to limit the accomplishment by an other means permitted by law of the formation or operation of an LLC formed or operated for a public benefit, including an LLC designated as a public benefit LLC, that is not a SPBLLC.

A provision of the RLLCA regarding notice provided by documents on file with the Secretary of State would be amended to reference the content required to be included in an SPBLLC's articles of organization by Section 6 of the bill. [Sec. 18]

Division of LLCs [Secs. 2, 16, 20, 35, 42]

The bill would create and amend law to provide for division of LLCs, as follows.

New Section – Domestic LLCs [Sec. 2]

The bill would create law allowing a domestic LLC to divide into two or more domestic LLCs, which would not be deemed to affect liabilities of persons or obligations or liabilities of the dividing company prior to the division. Such obligations or liabilities would be allocated to the division company or companies pursuant to the plan of division. Each

resulting company would be required to be formed in compliance with the RLLCA and the provisions created by the bill. The bill would define key terms related to division.

A manner of adopting a plan of division could be specified in an operating agreement. Otherwise, a plan of division could be adopted in the same manner as specified in the operating agreement for a merger or consolidation, if the operating agreement does not prohibit division. If the operating agreement does not provide for merger or consolidation and does not prohibit division, a plan for division may be authorized by the affirmative vote of members who own more than 50 percent of the then-current percentage or other interest in the profits of the dividing company owned by all members.

Unless provided otherwise in the division plan, division would not require an LLC to wind up its affairs or pay its liabilities and distribute its assets and would not constitute a dissolution of the LLC.

The bill would allow exchange or conversion of rights or securities of or interests in the dividing company, or would allow them to be canceled or remain outstanding.

A plan of division could amend the operating agreement of or adopt a new operating agreement for the dividing company if it survives the division and would effect the adoption of a new operating agreement for each resulting company, which would be effective at the effective time or date of the division. Such amendment or adoption would be effective notwithstanding any provision in the operating agreement of the dividing company regarding amendment or adoption of a new operating agreement, other than such a provision applicable in connection with a division, merger, or consolidation.

The plan of division would be required to include the terms and conditions of the division, including those regarding conversion, exchange, or cancellation of LLC interests of the

dividing company, or if such shall remain outstanding; allocation of assets, property, rights, series, debts, liabilities, and duties of the dividing company among the division companies; names of the resulting and surviving companies; name and business address of a division contact, who would serve for six years following the division and have custody of a copy of the plan of division, which the contact would be required to provide to creditors as specified in the bill; and any other matters the dividing company includes.

The bill would require the surviving company and any other division company to file a certificate of division with the Secretary of State for each resulting company. The bill would specify required contents of such certificate of division. The bill would require the articles of organization for each resulting company to be filed simultaneously with the certificate of division, with the same effective date or time if not effective upon filing. A certificate of division would act as a certificate of cancellation for a dividing company that is not a surviving company.

An operating agreement could provide that a domestic LLC shall not have the power to divide.

The bill would provide for various items upon a divisions of a domestic LLC becoming effective, including: effect upon the resulting companies and the dividing company if it is not a surviving company; allocation and vesting of rights, privileges, powers, property, and debts; liability for allocated debts, liabilities, and duties of the dividing company; allocation and enforcement of debts, liabilities, and duties; liability for fraudulent transfer; liability for non-allocated debts and liabilities; reasonable identification of assets, property, rights, series, debts, liabilities, and duties; vesting of allocated rights, privileges, powers, and interests in property; and continuation of actions or pending proceedings against surviving or resulting companies.

The bill would provide, in applying the provisions of the RLLCA on distributions, a direct or indirect allocation of

property or liabilities in a division is not deemed a distribution. The new division provisions would not be construed to limit the means of accomplishing a division by any other means provided for in an operating agreement or other agreement or as otherwise permitted by the RLLCA or other law.

The bill would provide that this section would apply to all LLCs formed on and after July 1, 2019. Additionally, it would apply to all LLCs formed prior to that date, except that any restriction, condition, or prohibition regarding merger or consolidation in any written contract, indenture, or agreement entered into prior to that date to which the dividing company is a party would be deemed to apply to a division.

Amendments to Current Law

The bill would amend the RLLCA statute governing cancellation to include cancellation upon the filing of a certificate of division if the LLC is a dividing company that is not a surviving company. [Sec. 16]

The RLLCA statute governing restated articles of organization would be amended to include a reference to division. [Sec. 20]

A \$20 fee would be added for filing of a certificate of division. [Sec. 35]

The BEST Act statute regarding LLC filings would be amended to include certificates of division. [Sec. 42]

Power of Attorney [Secs. 1 and 45]

The bill would amend the power of attorney statute in the BEST Act by removing provisions related to formation, internal affairs, or termination of a covered entity or granted by persons in certain roles and focusing the statute on those documents filed with the Secretary of State pursuant to the

BEST Act. The statute's applicability also would be limited as otherwise provided in a covered entity's public organic document or organic rules.

The bill would create a new section in the RLLCA addressing power of attorney. This section would provide that, unless otherwise provided in an operating agreement, a person may enter into an operating agreement or amendment by an agent, including an attorney-in-fact, and authorization to do so need not be in writing, sworn, verified, or acknowledged. The section also would contain provisions regarding irrevocable powers of attorney and proxies substantially similar to those previously applicable under the BEST Act statute discussed above. Finally, the section would state it shall not be construed to limit enforceability of a power of attorney or proxy that is part of an operating agreement.

Other RLLCA Provisions

Domestic and Foreign LLCs [Secs. 14 and 37]

The definitions section and taxation section would be amended to clarify language relating to domestic LLCs and foreign LLCs.

Time of Formation [Sec. 15]

The bill would add language providing that an LLC is formed at the time provided by the BEST Act statute governing effective date if there has been substantial compliance with RLLCA requirements regarding execution and filing of articles of organization.

Certain Effective Time or Date Limitations Removed [Secs. 16, 20, 22]

The bill would remove limitations on the future effective date or time of certificates of cancellation, restated articles of organization, and certificates of merger or consolidation.

Merger or Consolidation [Sec. 22]

A provision allowing exchange or conversion of rights or securities of or interests in an LLC that is a constituent party to a merger or consolidation into rights or securities of, or interests in, an LLC that is not the surviving or resulting LLC in the merger or consolidation would be amended to instead allow exchange or conversion into rights or securities of, or interests in, an entity as defined in the BEST Act that is not the surviving or resulting LLC. This provision also would be amended to specify that the rights or securities of or interests in the constituent party LLC may remain outstanding.

Voting [Secs. 22, 32, and 33]

The bill would change certain default voting requirements for those LLCs formed after June 30, 2019. For votes on agreements of merger or consolidation or to dissolve and wind up an LLC, the required vote would be by the members owning more than the specified percentage of the then-current percentage or other interest in the profits of the LLC owned by all the members. Continuing voting requirements for those LLCs formed on or prior to June 30, 2019, would be by each class or group of members, if the LLC has more than one class or group of members.

Access to Information; Records [Sec. 25]

A statute regarding LLC records and access to information would be amended to permit an attorney or other

agent for an LLC member to obtain certain information that may be obtained by the member under continuing law. Such demand on behalf of a member would be required to be accompanied by a power of attorney or other writing authorizing the attorney or other agent to so act on the member's behalf.

This statute also would be amended to require an LLC to maintain a current record identifying the name and last known business, residence, or mailing address of each member and manager, and to allow the use of electronic networks or databases, including distributed electronic networks or databases, to maintain records.

Delegation [Sec. 27]

The statute governing the delegation of rights and powers to manage would be amended to also allow the delegation of duties. The bill would remove a phrase specifically allowing the delegation of the right or power to delegate. The bill would add that a delegation by a member or manager shall be irrevocable if it states it is irrevocable, unless otherwise provided in the operating agreement. The bill also would add that no other provision of the RLLCA shall be construed to restrict the power and authority to delegate as provided in this section.

Limitation of Remedies [Sec. 30]

The RLLCA currently provides the entry of a charging order is the exclusive remedy by which a judgment creditor of a member or assignee may satisfy a judgment out of the judgment debtor's LLC interest. The bill would add to this provision that attachment, garnishment, foreclosure, or other legal or equitable remedies are not available to the judgment creditor, regardless of the number of members of the LLC.

Membership of Single Assignee [Sec. 31]

The bill would add a provision that unless otherwise provided in the operating agreement by specific reference or in connection with the assignment, an assignee of an LLC interest becomes a member where there is voluntary assignment by the sole member of an LLC of all the LLC interests in the LLC to a single assignee. An assignment is voluntary if it is consented to or approved by the member at the time of the assignment and is not effected by foreclosure or similar legal process.

Fiduciary Duties [Sec. 34]

The bill would specify the rules of law and equity relating to fiduciary duties are among those rules of law and equity that are to apply where not otherwise provided in the RLLCA.

Revocation of Dissolution [Sec. 40]

The bill would amend the statute preventing dissolution in certain circumstances to specify a dissolution may be revoked in a manner specified in an operating agreement or an operating agreement may prohibit revocation of dissolution. The default circumstances under which dissolution may be revoked would be restructured and amended to allow revocation of:

- A dissolution effective by vote, consent, or approval; by vote, consent, or approval and by approval of any others required by the operating agreement;
- A dissolution at a specified time or upon a specified event, by vote, consent, or approval required to amend the provision of the operating agreement effecting the dissolution and by approval of any others required by the operating agreement; and

- A dissolution effective upon the last remaining members ceasing to be a member, by vote, consent, or approval of the personal representative of the last remaining member of the LLC or the assignee of all the LLC interests in the LLC and by approval of any others required by the operating agreement.

This statute also would be amended to include the assignee of all the LCC interests in the LLC in the procedure to be followed to admit a nominee or designee in certain circumstances, and to provide that the statute shall not be construed to limit the accomplishment of revocation of dissolution by other means permitted by law.

Consent and Approval

The bill would add provisions allowing a person to give consent or approval as a member or manager of any matter and make such consent or approval effective at a future time, including upon the happening of an event. Such consent or approval would be effective as long as the person is a member or manager at the future time specified, unless otherwise provided in an operating agreement. [Secs. 23 and 26]

Throughout the bill, requirements that consent or approval be in writing would be removed. References to consent or to approval would be standardized with references to both consent and approval.

Electronic Networks and Databases

Throughout the bill, provisions would be added allowing the use of electronic networks or databases, including distributed electronic networks or databases, for certain electronic transmissions.

Non-substantive and Technical Amendments

The bill would amend the RLLCA section governing resignation from an LLC to replace a reference to a previous version of the section with the actual language (with slight non-substantive revisions) of the previous version of the section. [Sec. 28]

Throughout the RLLCA, the bill would replace references to “this act” with “the Kansas revised limited liability company act.” Additional technical amendments would be made to update or standardize statutory references and phrasing and remove an expired effective date.

Conference Committee Action

The Conference Committee agreed to remove the contents of HB 2039, as it entered conference, relating to recognition of tribal court judgments (this provision was included in the Conference Committee Report for SB 20), and insert the contents of HB 2243, as amended by the House Committee on Judiciary, relating to registration requirements of charitable organizations, and the contents of HB 2105, relating to LLCs.

Background

Background regarding the contents of HB 2039 as it entered conference (relating to the recognition of tribal court judgments) may be found in the Conference Committee Report Brief on SB 20.

HB 2243 (Registration of Charitable Organizations)

HB 2243 was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of Representative Finch. In the House Committee hearing, a

representative of Prairie Paws Animal Shelter testified in support of the bill, stating that the value of in-kind gifts, such as dog food and volunteer hours to animal shelters, can put shelters over the minimum donation threshold for annual audit requirements under COSA, which can be costly to the shelter. No other testimony was provided.

The House Committee amended the bill to refer to an animal shelter “licensed pursuant to” the Pet Animal Act, rather than “as defined in” that Act. [*Note: the Conference Committee retained this amendment in its report.*]

According to the fiscal note prepared by the Division of the Budget on HB 2243, as introduced, the Secretary of State’s Office (Office) has identified approximately 75 registered charitable organizations that may meet the definition of an animal shelter and could be exempt under the provisions of the bill. The Office estimates the exemption could reduce its revenues by about \$1,125 and reduce State General Fund revenues by about \$1,500 annually. Enactment of HB 2243 would have no fiscal effect on agency expenditures.

HB 2105 (LLC Amendments)

HB 2105 was introduced by the House Committee on Judiciary at the request of the Kansas Bar Association (KBA).

In the House Committee on Judiciary and Senate Committee on Judiciary hearings, KBA representatives testified in support of the bill, stating the bill would update the RLLCA and related provisions and implement fixes and technical changes needed due to court decisions and LLC law adopted in Delaware. The proponents stated the series LLC amendments would replace the version originally enacted in Kansas in 2012, based upon Illinois law, with a version based upon law enacted more recently by Delaware. No other testimony was provided.

According to the revised fiscal note prepared by the Division of the Budget on HB 2105, the Office of Judicial Administration indicates enactment of the bill would not have a fiscal effect on the Judicial Branch budget.

The Office of the Secretary of State indicates enactment of HB 2105 would increase expenditures by approximately \$2,500 in FY 2019 and \$1,500 in FY 2020 to update the agency's filing system. The agency anticipates additional revenues of approximately \$19,985 beginning in FY 2020 from fees from the annual report filings required by the bill, which the agency estimates would result in 390 additional annual reports at a filing fee of \$55 (paper) or \$50 (online) per report. The agency is unable to estimate how many additional LLCs would register as a series or if existing LLCs would file a certificate to designate as a series LLC after FY 2020, and cannot estimate how much the \$20 Certificate of Division charge would raise.

Business entities; limited liability companies; Kansas Revised Limited Liability Company Act; Business Entity Standard Treatment Act; charitable organizations; animal shelters

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