

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2207**

As Recommended by House Committee on
Judiciary

Brief*

Sub. for HB 2207 would allow for the formation of a business entity known as a series limited liability company (series LLC) and include other provisions concerning their operation. Pursuant to the bill, an operating agreement could establish or provide for the establishment of one or more designated "series" of members, managers, or LLC interests. The series could have separate rights, powers, or duties with respect to specified property or obligations of the LLC or with respect to profits or losses associated with specified property or obligations. Additionally, the series could have separate business purposes and investment objectives to the extent provided in the operating agreement.

The bill also would allow for limitation of liability for each series. When an operating agreement establishes or provides for the establishment of one or more series, the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series would be enforceable only against the assets of that series, so long as the following conditions are met:

- The records maintained for such series account for the assets associated with it separately from the other assets of the LLC, or any other series thereof;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The operating agreement provides for a limitation on liabilities to such series;
- Notice of the limitation on liabilities of such series is included in the LLC's articles of organization; and
- The LLC has filed a certificate of designation for each series to have limited liability.

Similarly, if those conditions are met, the bill would provide that unless otherwise provided in the operating agreement, none of the debts, liabilities, and expenses incurred, contracted for, or otherwise existing with respect to the LLC or any other series thereof would be enforceable against the assets of such series. Notice of the limitation of liabilities of a series within the articles of organization and a certificate of designation for a series on file with the Secretary of State would constitute notice of limitation on liabilities of a series.

To the extent set forth in the articles of organization, the bill would provide that a series with limited liability would be treated as a separate entity. Each series with limited liability, in its own name, could contract, hold title to assets, grant security interests, sue and be sued, and otherwise conduct business and exercise the powers of an LLC. Further, the LLC and any of its series could elect to consolidate their operations as a single taxpayer to the extent allowed by law, work cooperatively, contract jointly, or be treated as a single business for purposes of qualification to do business in this or any other state. Except to the extent the series specifically accept joint liability by contract, these elections would not affect the limitation of liability.

The bill would require the name of the series with limited liability to contain the entire name of the LLC and be distinguishable from the names of the other series listed in the articles of organization. If the LLC is a foreign LLC with an assumed name, the name of the series with limited liability would have to contain the entire name under which the foreign LLC has been admitted to transact business in state.

The bill would allow the operating agreement to provide for classes or groups of members or managers associated with a series to have relative rights, powers, and duties. It also could make provision for the future creation of additional classes or groups of members or managers associated with the series who would have 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. Further, it could provide for a series to 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, and unless it states otherwise, the management of a series would be vested in the members associated with the series.

Pursuant to the bill, the series' existence would begin when the certificate of designation is filed with the Secretary of State, setting forth the name of each series with limited liability. Certificates of designation could be executed by the LLC or any manager, person, or entity designated in the LLC's operating agreement. Copies of the filed certificate of designation marked with the filing date would be conclusive evidence, except against the state, of compliance with all conditions precedent and of legal organization and formation.

If different from the LLC, the bill would require the certificate of designation for each series to 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 could 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 the series. If not the same as the LLC, the names of the members, if member managed, or the names of the managers, if manager managed, could be changed by filing a new certificate of designation with the Secretary of State.

The bill would allow the operating agreement to grant to all or certain identified members, 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. Additionally, it could provide that any member, class, or group of members associated with a series shall have no voting rights.

Except as provided in the operating agreement, the bill would state that any event pursuant to the 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 the manager to cease to be a manager of the LLC or any other series thereof. Similarly, any event that causes a member to cease to be associated with a series would not, in itself, terminate the series, the member's association with any other series, or the member's continued membership in the LLC, regardless of whether the member was the last remaining member associated with the series.

If a foreign LLC establishes a series, as allowed in the jurisdiction of its organization, with separate rights, powers, or duties, the bill would allow the LLC on behalf of itself or any of its series, or any of its series on their own behalf, to register to do business in Kansas if it has placed limitations on liability so that 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 LLC generally or any other series thereof, or
- The LLC generally or any other series thereof are not enforceable against the assets of such series.

Under these circumstances, the bill would require the foreign LLC to include the limitation of liability on the

application for admission as a foreign LLC and to file a certificate of designation for each series being registered to do business in the state by the LLC. Unless otherwise provided by the operating agreement, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series of such foreign LLC would be enforceable against the assets of such series only, and not against the assets of the foreign LLC generally or any other series thereof. Similarly, none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to such a foreign LLC generally or an other series thereof would be enforceable against the assets of such series.

The bill would provide for a series with limited liability to be dissolved by filing with the Secretary of State a certificate of designation identifying the series being dissolved. Except as otherwise provided in the operating agreement, it also could be dissolved and its affairs wound up without causing the dissolution of the LLC. The dissolution of a series would not affect the limitation on liabilities. Further, a series would be terminated and its affairs wound up upon the dissolution of the LLC, as provided in the Revised Limited Liability Company Act.

Additionally, the bill would provide that a series would be deemed to be in good standing as long as the LLC is in good standing, and the LLC's registered agent and registered office in Kansas would serve as the agent and office for service of process in Kansas for each series. Further, it would state the provisions that are generally applicable to LLCs their managers, members, and transferees would apply to each particular series with respect to the operation of such series.

Finally, the bill would make technical amendments to two existing statutes applicable to LLCs to include series.

Background

In the House Committee on Judiciary, Representative Rob Bruchman and two local attorneys offered testimony in support of the bill. Representatives of the Secretary of State's Office and the Kansas Bankers Association offered neutral testimony. The Committee amended the bill by adopting a substitute.

The fiscal note for HB 2207, as introduced, indicates the precise effect of passage cannot be determined as litigation may increase but the number of cases and their complexity are unknown. Regardless, the Office of Judicial Administration states the effect likely would be accommodated within existing resources.