

Limited Liability Companies; Registration of Animal Shelters; HB 2039

HB 2039 amends the Charitable Organizations and Solicitations Act 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 creates and amends law related to limited liability companies (LLCs) in the Kansas Revised Limited Liability Company Act (RLLCA), Business Entity Standard Treatment (BEST) Act, and other statutes, as follows.

Series LLCs

The bill creates and amends 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 [Section 3]

The bill creates 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 provides being the surviving or resulting series.

Unless otherwise provided by the operating agreement, the bill requires merger or consolidation 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 allows exchange or conversion of rights or securities of or interests in the constituent series, or allows them to be canceled or remain outstanding. An agreement of merger or consolidation can be terminated or amended pursuant to a provision for such in the agreement.

The bill requires the surviving or resulting series to file with the Secretary of State a certificate of merger or consolidation, executed by authorized persons, which must 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 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 is effective upon the filing of the certificate with the Secretary of State.

A certificate of merger or consolidation acts 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 is 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 is 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 may amend the operating agreement of the constituent series, and any amendment relating solely to such series is effective at the effective time or date of the merger or consolidation. Such amendment or adoption is 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 may 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 or other agreement, or otherwise by law.

The bill provides 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 does not require such series to wind up its affairs or pay its liabilities and distribute its assets, and the merger or consolidation does not constitute a dissolution of such series.

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

Series Reinstatement [Section 4]

The bill creates 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 bill requires the certificate 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 is deemed to be an amendment to the certificate of designation and, upon its filing, the series will be reinstated with the same force and effect as if the certificate of designation had not been canceled. The bill sets 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 [Section 21]

Effective July 1, 2020, the bill amends the RLLCA statute governing restated articles of organization to add provisions regarding restated certificates of designation. These provisions 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 may, 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, is specifically designated a “restated certificate of designation” and is 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, is specifically designated an “amended and restated certificate of designation” and is executed and filed in the same manner as described above.

The bill requires 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 must 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 requires 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 is superseded, and the restated certificate is the certificate of designation of the series, but the original effective date of formation of the series remains unchanged.

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

Restructuring and Amendment of Series LLC Requirements [Section 39]

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

The bill removes 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.

Restructuring. Some provisions within the removed law are 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.

Additions. The bill adds numerous provisions to law governing series LLCs, as follows.

The bill states 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 is 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 requires notice of the limitation on liabilities of a series be set forth in the articles of organization of the LLC, which is sufficient regardless of whether 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 adds language stating current and amended language regarding limitation on liability does 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 adds 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 provides 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 states 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 is 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 sets forth various voting provisions that may be included in an operating agreement and states voting may be on any basis, including several specifically listed.

Unless otherwise provided in an operating agreement, the bill vests 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 is vested in the manager accordingly, and the bill gives effect to other operating agreement provisions regarding managers. A series may have more than one manager.

The bill adds 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 ceases 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 member's LLC interest in the series.

The bill states 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 sets forth the authority and requirements of the persons winding up the affairs of the series, which do 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 may 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 is an association for all purposes of Kansas law, regardless of the number of members or managers.

The bill sets 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, is deemed to comply with these requirements. The bill requires the certificate of

designation be executed and filed in accordance with the BEST Act and states a certificate of designation is not an amendment to the articles of organization of the LLC.

The bill permits 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 is deemed to be a certificate of amendment.

The bill requires 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 may 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 is effective at the time of filing.

The bill sets forth the circumstances under which a certificate of designation must 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 is deemed a certificate of cancellation. The bill provides for correction of a certificate of cancellation and prohibits 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 specifies requirements for the name of the series to be set forth in the certificate of designation.

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

Other Series LLC Amendments in RLLCA

The bill amends 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 amends 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. [Sections 17, 19, 36, and 41]

Effective July 1, 2020, the bill amends 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 requires the annual report to be filed at, and its tax period deemed to be, the time prescribed by law for filing the annual Kansas income tax return for the LLC to which the series is associated. [Section 38]

Series LLC Amendments in Other Acts and Codes

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

Effective July 1, 2020, the bill amends 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. [Sections 43, 46, 47, and 49]

The bill amends 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 continuing 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 bill requires the service to include the name of the LLC and the name of the series. [Section 50]

The bill amends the Uniform Commercial Code (UCC) general definitions statute (effective July 1, 2020) to include a series within the definition of “person” and amends 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. [Sections 51 and 52]

Statutory Public Benefit LLCs [Sections 5-12, 18]

The bill creates (Sections 5-12) and amends (Section 18) law to create a type of LLC known as a “statutory public benefit limited liability company” (SPBLLC), as follows.

Applicability [Section 5]

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

Definitions and Name [Section 6]

The bill defines “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 is 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 is required to identify specific public benefit or benefits to be promoted and state it is an SPBLLC.

The bill defines “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 defines “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 requires, 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 [Section 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 is 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 [Section 8]

The members, managers, or other persons with authority to manage or direct the business and affairs of an SPBLLC (managing person) are 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 has no liability for monetary damages for the failure to manage or direct in the manner required above.

Such managing person has 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 is 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 [Section 9]

An SPBLLC is 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. The bill requires this statement 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 requires the statement be based on a third-party standard, as defined in this new section.

The bill requires an SPBLLC to post its most recent statement on the public portion of its website. If the SPBLLC does not have a website, it must 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 may 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 may 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 [Section 10]

Members or assignees of LLC interests in an SPBLLC may maintain a derivative lawsuit to enforce the managing and directing duties set forth in Section 8 of the bill if those members or assignees own (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.

Other Provisions

Section 11 states Sections 5 through 12 shall not affect a statute or rule of law applicable to any LLC formed under the RLLCA that is not an SPBLLC. Section 12 states Sections 5 through 12 shall not be construed to limit the accomplishment by another 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 an SPBLLC.

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

Division of LLCs [Sections 2, 16, 20, 35, and 42]

The bill creates and amends law to provide for division of LLCs, as follows.

Dividing a Domestic LLC

The bill creates law (Section 2) allowing a domestic LLC to divide into two or more domestic LLCs, which are not deemed to affect liabilities of persons or obligations or liabilities of the dividing company prior to the division. Such obligations or liabilities are allocated to the division company or companies pursuant to the plan of division. Each resulting company must be formed in compliance with the RLLCA and the provisions created by the bill. The bill defines key terms related to division.

A manner of adopting a plan of division may be specified in an operating agreement. Otherwise, a plan of division may 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 does not require an LLC to wind up its affairs or pay its liabilities and distribute its assets and does not constitute a dissolution of the LLC.

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

A plan of division may amend the operating agreement of or adopt a new operating agreement for the dividing company if it survives the division and effects the adoption of a new operating agreement for each resulting company, which is effective at the effective time or date of the division. Such amendment or adoption is 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 bill requires the plan of division to include the terms and conditions of the division, including those regarding conversion, exchange, or cancellation of LLC interests of the dividing company, or whether 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 serves for six years following the division and has custody of a copy of the plan of division, which the bill requires the contact to provide to creditors as specified in the bill; and any other matters the dividing company includes.

The bill requires 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 specifies required contents of such certificate of division. The bill requires 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 acts as a certificate of cancellation for a dividing company that is not a surviving company.

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

The bill provides for various items upon a division of a domestic LLC becoming effective, including the 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 provides, 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 are 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 provides this section applies to all LLCs formed on and after July 1, 2019. Additionally, it applies 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 is deemed to apply to a division.

Amendments to Law

The bill amends 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. [Section 16]

The RLLCA statute governing restated articles of organization is amended to include a reference to division. [Section 20]

A \$20 fee is added for filing of a certificate of division. [Section 35]

The BEST Act statute regarding LLC filings is amended to include certificates of division. [Section 42]

Power of Attorney [Sections 1 and 45]

The bill amends the power of attorney statute in the BEST Act to remove 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 is limited as otherwise provided in a covered entity's public organic document or organic rules.

The bill creates a new section in the RLLCA addressing power of attorney. This section provides 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 contains provisions regarding irrevocable powers of attorney and proxies substantially similar to those

previously applicable under the BEST Act statute discussed above. The section states 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 [Sections 14 and 37]

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

Time of Formation [Section 15]

The bill adds 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 [Sections 16, 20, and 22]

The bill removes 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 [Section 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 is 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 is amended to specify the rights or securities of or interests in the constituent party LLC may remain outstanding.

Voting [Sections 22, 32, and 33]

The bill changes 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 must be by the members owning more than the specified percentage of the then-current percentage or other interest in the profits of the LCC owned by all the members. Continuing voting requirements for those LLCs formed on or prior to June 30, 2019, are by each class or group of members, if the LLC has more than one class or group of members.

Access to Information; Records [Section 25]

A statute regarding LLC records and access to information is 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 must 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 is 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 [Section 27]

The statute governing the delegation of rights and powers to manage is amended to allow the delegation of duties. The bill removes a phrase specifically allowing the delegation of the right or power to delegate. The bill adds that a delegation by a member or manager must be irrevocable if it states it is irrevocable, unless otherwise provided in the operating agreement. The bill also adds 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 [Section 30]

The RLLCA continues to provide 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 adds 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 [Section 31]

The bill adds 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 upon the 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 [Section 34]

The bill specifies 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 [Section 40]

The bill amends 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. Provisions describing the default circumstances under which dissolution may be revoked are restructured and amended to allow revocation of:

- A dissolution effected by vote, consent, or approval, pursuant to the vote, consent, or approval and by approval of any others as 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 as required by the operating agreement; and
- A dissolution effective upon the last remaining member 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 is 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 adds 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 is effective as long as the person is a member or manager at the future time specified, unless otherwise provided in an operating agreement. [Sections 23 and 26]

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

Electronic Networks and Databases

Throughout the bill, provisions are 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 amends 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. [Section 28]

Throughout the RLLCA, the bill replaces references to “this act” with “the Kansas revised limited liability company act.”