STATE OF KANSAS
HOUSE OF REPRESENTATIVES

ROB BRUCHMAN
REPRESENTATIVE 20TH DISTRICT
STATE CAPITOL
300 S.W. TENTH AVENUE
TOPEKA, KANSAS 66612

785-296-7644
rob.bruchman@house.ks.gov

MEMORANDUM

TO: Chairman Kinzer and Members of the House Judiciary Committee

DATE: January 11, 2012

RE: Series limited liability companies

Limited liability companies ("LLC") have become the most popular form of new business entities in use today because of the corporate-like liability protections combined with the advantages of being treated like a partnership for tax purposes. The LLC structure provides for greater contractual flexibility by allowing members to contract for varying profit distribution formulas, altering voting rights among members and loosening of managerial responsibilities to reflect the overall objectives of the business entity. While the conventional LLC has been incredibly successful, there has been a growing trend among states on the forefront of corporate law to adopt statutes promoting what is known as series LLCs. Delaware was the first state to adopt a series LLC statute, but numerous states have followed including Oklahoma, Iowa, Illinois, Texas, Utah, Nevada and Wisconsin.

Series Limited Liability Company Defined

The concept of a series limited liability company ("SLLC") is to subdivide an LLC into separate classes (known as "series") having separate members, managers, interest, and business purposes. Each series is allowed to hold assets in its own name and has the ability to contract for its own debts and obligations. Additionally, the SLLC can create numerous series within the SLLC to accomplish diverse business objectives and/or hold title to real estate separately. Thus, an SLLC provides that the particular debts, liabilities, and obligations relating to a particular series is enforceable only against the assets of that particular series and not against the assets of the SLLC generally or any other series within the SLLC.

Separation of Assets

Separating assets can serve a variety of goals including aligning creditors with assets, separating "high risk" and "low risk" assets and protecting assets from judgments. This not only allows for greater managerial flexibility but also affords increased freedom and creativity for investors and owners. Rather than investing in an LLC in its entirety, one may choose to invest or even become a member in one or several of the series of the SLLC in which they may perceive as having the greatest opportunity while reducing their overall exposure to risk.

Administrative Cost Reduction

SLLCs require only one certificate of formation to be filed with the Secretary of State for all series, which is an efficient avenue to avoid the administrative difficulties associated with multiple filings for essentially the same business. The commonality among series reduces the administrative costs and burdens associated with establishing and maintaining several LLCs. This may seem relatively small when compared to other expenses but the costs can become substantial for small business owners who need to maintain separate LLCs.

Below is a comparison of estimated costs of an LLC to an SLLC in the state of Kansas for a company with ten (10) wholly owned subsidiaries. The figures include filing fees, filings service, and fictitious name. Key figures not accounted for include legal and accounting fees associated with the formation of a business entity. However, there is an expectation that legal and accounting fees associated with forming 10 LLCs will be substantially greater than forming one SLLC.

Kansas LLC	**Kansas SLLC**
Certificate of Formation = $165 10 x $165 = $1,650	Certificate of Formation = $165
Annual Report = $40 10 x $40 = $400	Annual Report = $40
Name Reservation = $20 10 x $20 = $200	Name Reservation = $20
Total Estimate = $2,250	Total Estimate = $225

Who Benefits

The SLLC is primarily intended for individuals and companies whose only alternative is a traditional LLC. Many times, these individuals and companies are forced to over-fund their LLC's with more assets than they could tolerate all being subject to the same judgment. The context in which SLLCs are currently being used range from Mutual funds to franchise businesses to real estate investments.

Benefits to Farming Industry

One example of how a SLLC could benefit a Kansas resident is in the context of farming. The farmer could establish an SLLC and place livestock, equipment, and land in separate series of the SLLC to protect each asset from any possible judgment against one of the series.

Benefits to Real Estate Industry

Assume a real estate investor owns five properties. Normally the investor has one of two options when it comes to protecting his assets. First, He could put all five properties under the same LLC but lenders tend not to prefer this since one property could wipe out the equity in one or more of the properties. His second option would be to create five individual LLCs for each of the five properties, which becomes prohibitively expensive to create and maintain. By allowing for SLLCs, the real estate investor would be able to place all five properties in a single LLC while at the same time compartmentalizing the liabilities associated with each of the properties by placing them in separate series and thereby protecting himself and his assets.

Value to the State of Kansas

The State of Kansas can utilize the attractiveness of SLLCs as a vehicle to encourage companies to set up diverse business interests by offering protections for ownership interests, operations and assets. The objective behind SLLC statutes is to offer asset protection and the ability to create several business interests operating under one business entity structure. The ultimate goal in the adoption of an SLLC statute is to promote economic growth by providing greater business opportunities by removing administrative burdens and promoting cost-saving attributes, including tax and liability advantages, to individuals starting and operating businesses in Kansas.

Written. Proponent A.

Arthur A. Glassman
James R. McEntire
Alan V. Johnson
Martha A. Peterson
Vernon L. Jarboe
Stephen D. Lanterman*
Brian M. Jacques
Christopher W. Sook**
Shaye L. Downing
Michael S. Hepfig
Danielle N. Davey

Of Counsel:
James Richard Bliss
Emily A. Hartz**

Retired:
Eldon Sloan
Myron L. Listrom
Louis F. Eisenbarth
James W. Sloan

All admitted in Kansas
*Admitted in Nebraska
**Admitted in Missouri

SLOAN, EISENBARTH, GLASSMAN, McENTIRE & JARBOE, L.L.C.

Topeka Office:
1000 Bank of America Tower
534 S. Kansas Avenue
Topeka, KS 66603-3456
(785) 357-6311
(785) 357-6340 (Fax)

Lawrence Office:
842 Louisiana Street
Lawrence, KS 66044
(785) 842-6311
(785) 842-6312 (Fax)

Reply to Topeka Office

February 17, 2011

Rep. Rob Bruchman
Kansas House of Representatives
House Judiciary Committee

RE: House Bill 2207, 2011 Session

Dear Rep. Bruchman:

I am the current President of the Kansas Bar Association's Section on Corporation, Business and Banking Law (the "Section"). I am writing you concerning House Bill 2207 ("HB 2207"), introduced by you in this year's session. It is my understanding that the purpose of HB 2207 is to incorporate into the Kansas Revised Limited Liability Company Act, KSA §§ 17-7662 to -76,142 (the "Kansas Act"), the so-called "series" provisions currently contained in the Delaware Limited Liability Company Act, Del. Code Ann. tit. 6, §§ 18-101 to -1109 (the "Delaware Act"), primarily in Del. Code Ann. tit. 6, § 18-215.

Given the timing with which it is being reviewed by the Legislature's committee, the Section has been unable to form an official opinion concerning HB 2207. However, I want to relay to you the consensus of several members of our Section who commonly practice in the area.

As you are aware, the Kansas Act, adopted in 1999 and effective January 1, 2000, was patterned after the Delaware Act, which continued the practice in Kansas of modeling our business entity laws with the business entity laws in Delaware begun with our corporation code. However, Kansas did not adopt the series provisions of the Delaware Act as part of the Kansas Act. There were perhaps several reasons for this omission, but the common understanding among the bar is that the series provisions were viewed as complex and there would be little demand for the feature.

Since the adoption of the Kansas Act, the corporate bar in Kansas has had greater experience with limited liability companies in general and with series limited liability companies. Many members of the bar have seen increased interest in forming limited liability companies utilizing the series feature, although that interest is growing slowly. Several practitioners in our bar have related that they have organized Delaware limited liability companies for the express purpose of taking advantage of the Delaware Act's series provisions. This growing popularity has been reflected in the growing number of states that have adopted series provisions as part of their respective limited liability company acts. Since its adoption in Delaware, at least Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, and Utah have also adopted series provisions.

As noted, while slowly increasing, the experience of our bar has been that the demand for series limited liability companies continues to be generally low in Kansas and throughout the United States. This lack of wide utilization may be attributed to the lack of certainty with the series provisions before the courts. The limited liability and asset protection aspects of series limited liability companies (one of the main advantages promoted for their use) has not been thoroughly vetted in the courts. There also remain questions as to how series limited liability companies will be treated for tax purposes—in particular under the Internal Revenue Service's "check-the-box" regulations.

Generally, the consensus among our practitioners that have weighed in on the topic is that the adoption of the Delaware Act's series provisions as part of the Kansas Act would be beneficial. Our bar believes that the demand for series limited liability companies will continue to grow, and as the courts and governmental agencies begin to resolve the current uncertainty on their treatment, we believe that the future demand for series limited liability companies could greatly increase. Our bar believes that there is no material reason why Kansas should not be able to accommodate the current demand for series limited liability companies that would otherwise be formed in our states and retain the associated organization fees and corporate/franchise taxes. Our bar further believes that adoption now would better guard against our laws being out of position should demand greatly increase in future years.

Thank you for your kind consideration.

Respectfully,

Christopher W. Sook
Sloan, Eisenbarth, Glassman,
McEntire & Jarboe, L.L.C.
2010-2011 KBA Corporation, Business & Banking
Law Section President

Series Limited Liability Companies

HB 2207

Rep. Rob Bruchman

20th District

Growth of Popularity of the LLC

- Corporate-like Liability Protections
- Partnership-like Tax Advantages
- Contractual Flexibility
  - Vary profit distribution
  - Alter voting rights
  - Loosen managerial responsibilities
  - Reflect overall objectives of business entity

Series Limited Liability Company (SLLC)

- Subdivides an LLC into separate classes (known as "series")
  - Separate members, managers, interests and business purposes
  - Ability to separate assets into separate series
  - Ability to contract separately for debts and obligations
- Debts, liabilities, and obligations of one series is enforceable only against the assets of that series and not against the assets of the SLLC generally or any other series within the SLLC

Series Limited Liability Company (SLLC)

- Separation of Assets
  - Aligns creditors with specific assets
  - Separates "high risk" from "low risk"
  - Protects assets from judgments
  - Reduces overall exposure to risk
- Greater Managerial Flexibility
- Increased Freedom and Creativity from Investors and Owners

States with SLLC Legislation Enacted

- Delaware - 1996
- Illinois - 2005
- Iowa - 2005
- Nevada - 2005
- Oklahoma - 2006
- Tennessee - 2005
- Texas - 2009
- Utah - 2006

Administrative Burdens Reduced

- SLLCs require only one set of articles of organization to be filed with the Secretary of State for all series
  - Avoids difficulties associated with multiple filings
  - Reduces administrative costs associated with establishing and maintaining several LLCs
- Benefits small businesses and start-up companies trying to enter the market place

Comparison of Estimated Costs

- Table below compares administrative costs for an LLC with 10 wholly owned subsidiaries to an SLLC

Kansas LLC	Kansas SLLC
Articles of Organization = $165 10 x $165 = $1,650	Articles of Organization = $165
Annual Report = $40 10 x $40 = $400	Annual Report = $40
Name Reservation = $20 10 x $20 = $200	Name Reservation = $20
Total Estimate = $2,250	Total Estimate = $225

Chart does not include associated legal fees associated with formation and maintenance

Who Benefits from the Use of SLLCs

- SLLC primarily intended for individuals and companies whose only alternative is a traditional LLC
  - SLLC avoid "over-funding" of LLC with more assets than desired to be subject to liability
- Variety of Industries and Businesses Currently Utilizing SLLCs
  - Mutual funds
  - Franchise Businesses
  - Real Estate Investments
  - Farming Industry
  - Entrepreneurs with multiple business ideas
  - Oil and Gas
  - Complex Business Arrangements

Farming Industry

- Protect various assets to avoid possible judgments or credit liabilities by creating multiple series
  - Livestock
  - Equipment
  - Land/Real Estate
  - Products

Farming SLLC Illustration

- Farmer forms SLLC with primary purpose to conduct operations in the farming industry
- Creates separate series with the SLLC to protect individual assets used in the farming operation
  - Series A to hold real estate and land
  - Series B to hold farming equipment
  - Series C to manage products and contracts with distributors

Real Estate

- Real Estate Investors
  - Able to place each investment property in a separate series
  - Insulates each property from the liabilities of other investment properties
    - One property would not be able to wipe out the equity of other properties
  - Avoids costs and burdens associated with protecting multiple investment properties
- Companies, Investment Groups and Private Kansas Citizens can take advantage of the benefits

Real Estate SLLC Illustration

- Real Estate Investor obtains 3 separate and distinct properties
  - Apartment complex
  - Vacant land
  - Commercial property (strip mall)
- Investor forms SLLC with primary purpose to manage real estate investments and related conduct
- Creates 3 series to segregate properties and limit liability and exposure to risk associated with the operation pertaining to each asset
  - Series A to manage and operate apartment complex
  - Series B to manage the vacant lot and possible future uses
  - Series C to manage and operate commercial property

Value to the State of Kansas

- Promote economic growth though private investments and job creation
- Develop greater business opportunities for residents and non-residents
- Encourage companies to set-up diverse business interests within Kansas
- Increase overall tax base
- Improve efficiency to current marketplace