

Testimony in Support of HB 2261
Before the Kansas House Judiciary Committee
Representative Kinzer Chairman
Presented by Garth Jacobson, Senior Government Relations Attorney. CT Corporation

Mr. Chairman and members of the House Judiciary Committee:

For the record I am Garth Jacobson representing CT Corporation. I am here today to testify in support of HB 2261 with proposed amendments.

CT Corporation is a compliance assistance business that provides services to attorneys, business entities and entrepreneurs. We assist by providing registered agent services, and assistance for business formation, licensing, UCC filing and other related services. CT Corporation has provided registered agent services for well over a hundred years. We represents over three hundred thousand companies with over one million units of representation of business entities throughout the United States and internationally.

I have been involved with the Uniform Law Commission drafting committees including: the Model Registered Agent Act, the Business Organization Code, the Uniform Law Enforcement Access to Entity Information Act and the Harmonization of Business Entity Acts. Most recently the Uniform Code Commissioners adopted the Harmonization Acts which included the Harmonized Uniform Limited Liability Company Act (HULLCA). While generally the changes were not substantive in nature they did harmonize the LLC legislation to the other unincorporated entity acts. The drafting committee also made some technical amendments and included some improvements to the “plumbing” of the LLC act. That is LLC filing requirements and treatment of registered agents, annual reports, etc. These technical changes generally improved and clarified the filing requirements and procedures associated with LLCs. It is in this area that I have three proposed amendments approved by the ULC for HULLCA.

The first proposed amendment would specify that no foreign LLC could do business in Kansas without first registering with the Secretary of State’s office. While this concept is implied in the legislation is not clearly stated. This language is in existing Kansas law and in the HULLCA. This amendment would put into the act the statement, “ A foreign limited liability company may not do business in this state until it registers with the secretary of state.” Without this amendment it is possible that a foreign LLC could argue they don’t have to register first before they do business in Kansas. That would disadvantage the domestic LLC and make it hard for the Kansas business and consumers to know how to contact the foreign LLC with whom they are doing business.

The second proposed amendment would permit an amendment to the foreign registration statement. Without this amendment the Secretary of State would somehow have to create this filing activity. This was an inadvertent omission and again is in current law and in the HULLCA.

The third amendment would make it clear that a registered agent may change its name or address without the approval of its represented entity. Likewise it permits the registered agent to submit one filing document to effectuate the change for all of the entities it represents. This amendment is consistent with current Kansas law K.S.A. Section 17-7666, and both the Model Registered Agent Act (MoRAA) and HULLCA. Without this amendment law firms and commercial registered agents could be placed in a hardship if they should need to change their address because they would need gain permission from and obtain a separate filing from each entity they

represent. In turn the Secretary of State's office could be flooded with reams of paper filings as compared to just one filing.

These amendments are simple and easy to integrate. I will gladly answer any questions about these amendments or provide further information.

In conclusion I support HB 2261 and respectfully request you adopt the below amendments. The amendments prevent confusion and clean up some technical errors. I would appreciate your support of the legislation and these amendments.

Proposed Amendments to HB 2261

Amendment 1 Amend New Section 56.

New Sec. 56. (a) A foreign limited liability company may not do business in this state until it registers with the secretary of state. A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

- (1) The name of the company and, if the name does not comply with section 8, and amendments thereto, an alternate name adopted pursuant to section 59(a), and amendments thereto;
- (2) the name of the state or other jurisdiction under whose law the company is formed;
- (3) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
- (4) the name and street and mailing addresses of the company's ~~initial~~ agent for service of process in this state.

(b) A foreign limited liability company shall deliver with a completed application under subsection (a) a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

Amendment 2

Following Section 58 insert:

NEW SECTION AMENDMENT OF FOREIGN REGISTRATION STATEMENT.

A registered foreign limited liability company shall deliver to the division for filing an amendment to its foreign registration statement if there is a change in :

- (1) the name of the company;
- (2) the company's jurisdiction of formation;
- (3) The information required in New Section 56 (a)(3).

Amendment 3

Following Section 14 insert new section:

NEW SECTION . CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.

(a) If a registered agent changes its name or address, the agent may deliver to the Secretary of State for filing a statement of change that states:

(1) the names of the limited liability companies or registered foreign limited liability companies represented by the registered agent;

(2) the name of the agent as currently shown in the records of the Secretary of State for the companies or foreign companies;

(3) if the name of the agent has changed, its new name; and

(4) if the address of the agent has changed, its new address.

(b) A registered agent promptly shall furnish notice to the represented limited liability Companies or registered foreign limited liability companies of the filing by the Secretary of State of the statement of change and the changes made by the statement.