

D R A F T  
FOR APPROVAL

## **UNIFORM PROTECTED SERIES ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR  
SAN DIEGO, CALIFORNIA  
JULY 14 - JULY 20, 2017

## **UNIFORM PROTECTED SERIES ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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June 5, 2017

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1 **PREFATORY NOTE**

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27

28 Part 1. The Protected Series Construct

29

30 As provided by statutes in 13 states, the District of Columbia, and Puerto Rico,<sup>1</sup> the protected

31 series construct has the following aspects:<sup>2</sup>

32

---

<sup>1</sup> As of May 11, 2016, the following statutes provide for protected series within a limited liability company. ALA. CODE §§ 10A-5A-11.01-.16 (2015); DEL. CODE ANN. tit. 6, §18-215 (West 2015); D.C. CODE ANN. §29-802.06 (2015); 805 ILL. COMP. STAT. ANN. 180/37-40 (West 2014); 2016 Ind. Legis. Serv. P.L. 170-2016 (H.E.A. 1336) (West); IOWA CODE ANN. §§ 489.1201-1206 (West 2014); KAN. STAT. ANN. § 17-76, 143 (West 2014); MO. REV. STAT. § 347.186.1 (2014); MONTANA CODE ANN. § 35-8-304 (West 2013); NEV. REV. STAT. ANN. § 86.296 (West 2014); OKLA. ST. ANN. tit. 18, §§ 2005(B), 2054.4 (West 2014); TENN. CODE ANN. § 48-249-309 (West 2014); TEX. BUS. ORGS. CODE ANN. §§101.601-622 (West 2013); UTAH CODE ANN. §§ 48-3a-1201 to 1209 (West 2014); P.R. LAWS ANN. tit. 14, § 3967 (2011).

<sup>2</sup> Existing statutes refer to “series” rather than “protected series.” Part 2 of this Note explains why this act and its commentary use the latter label.

- 1 • an identifiable set of assets segregated within a limited liability company (“a series
- 2 limited liability company”);<sup>3</sup>
- 3 • the assets:
  - 4 ○ comprise a protected series, empowered to conduct activities in its own name and
  - 5 right;
  - 6 ○ must be identified by thorough recordkeeping that distinguishes them from assets
  - 7 of the series limited liability and assets of any other protected series of the
  - 8 company;<sup>4</sup>
  - 9 ○ are obligated solely to persons asserting claims pertaining to activities related to
  - 10 the segregated assets; and
  - 11 ○ are not available to persons asserting claims arising from the activities of the
  - 12 series limited liability company or any other protected series of the company;
- 13 • one or more members of the series limited liability company may be associated with the
- 14 protected series,<sup>5</sup> but not necessarily; and
- 15 • distributions arising from the assets and activities go to:
  - 16 ○ the members associated with the protected series, if any; or
  - 17 ○ if the series has no associated members, the series limited liability company.

18  
 19 Thus, a series limited liability company contains “internal shields” – *i.e.*, asset partitions  
 20 confining the assets and liabilities of each protected series solely to creditors of that protected  
 21 series. These “horizontal” shields are conceptually and practically quite different from the  
 22 traditional, “vertical” shield that protects the owners of an organization from automatic, status-  
 23 based liability for the organization’s obligations.

[dsk – insert diagram, including vertical/horizontal nomenclature]

24 Part 2. “Protected Series” as the Term of Art

25  
 26 Following long-standing practice with statutory trusts and investment companies, existing  
 27 protected series statutes use “series” as the term of art for the construct just described. However,

---

<sup>3</sup> Delaware law authorizes protected series within a limited partnership, Del. Code Ann. tit. 6, §17-218 (2015), but few Delaware limited partnerships provide for protected series. Statutory trusts also have series, but those series differ fundamentally from the protected series authorized by this act. For example, while “[a] series of a statutory trust is not an entity separate from the statutory trust,” Uniform Statutory Trust Entity Act (2009) (Last Amended 2013), Section 401(b), and “may not sue or be sued in its own name,” *Id.* Section 403(a), “[a] protected series has the capacity to sue and be sued in its own name,” Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 104(a), and “is a person distinct from ... the [limited liability] company [and any other]... protected series of the company.” *Id.* Section 103(1)-(2),

<sup>4</sup> The recordkeeping is not part of the public record, although some assets might be titled in the name of a protected series. See Section 301(e). The act contains an important and novel inducement to accurate recordkeeping. See Part 7-C of this Note.

<sup>5</sup> Allowing a non-member of a series limited liability company to be associated with a protected series of the company would cause daunting complexity while producing very little (if any) benefit. See Section 302(a), cmt.



1 outside that context, “series” has an established and very different meaning with regard to bonds,  
2 corporate stock, etc. As a result, using “series” to label the new construct is quite confusing.<sup>6</sup> To  
3 avoid confusion, this act uses the term “protected series” – both to signal a different meaning and  
4 to call attention to the internal, horizontal shields which are the construct’s defining  
5 characteristic.

### 6 7 Part 3. The Import of the Protected Series Construct

8  
9 The protected series:

- 10
- 11 • pushes the conceptual envelope of entity law by providing for a quasi-distinct legal
  - 12 person existing *within* an overarching entity;
  - 13 • establishes a new type of liability shield, the “internal” or “horizontal” shield. Rather
  - 14 than protecting the owners of an organization from status-based liability for the
  - 15 organization’s debts, obligations, and other liabilities (the “vertical shield”), the
  - 16 internal/horizontal shields:
    - 17 ▪ protect the assets of one protected series from the creditors of the series limited
    - 18 liability company and the creditors of any other protected series of the company;
    - 19 and
    - 20 ▪ provide comparable protection for the assets of the series limited liability
    - 21 company itself.
- 22

### 23 Part 4. Growing Popularity of Series Limited Liability Companies

24  
25 It is not possible to determine the number of series limited liability companies and protected  
26 series in existence in the United States, because under most protected series statutes a limited  
27 liability company can establish a protected series without making a corresponding  
28 public filing. The only item on the public record will be a statement that the company has the  
29 capacity to establish protected series. However, anecdotal evidence suggests heavy usage,  
30 especially under the Delaware statute.<sup>7</sup>

31  
32 Better data is available from Illinois, where the law requires a public filing to establish a  
33 protected series. As of January 26, 2016, more than 26,000 protected series were active under  
34 Illinois law.<sup>8</sup>

---

<sup>6</sup> For example, lists of limited liability company statutes with “series” provisions have often included the statutes of Minnesota, North Dakota, and Wisconsin. Although these acts did (in the case of Minnesota and North Dakota) and do (in the case of Wisconsin) refer to “series,” the word has nothing to do with asset partitioning and internal shields. The three acts have used “series” to describe a category of ownership interest analogous to a series of stock. See Minn. Stat. § 322B.03, subd. 44, repealed 2014 Minn. Laws ch. 157, art. 1; ND Stat. § 10-32.1-02(48), repealed 2015 North Dakota Laws Ch. 87; Wis. Stat. § 183.0504 (2017).

<sup>7</sup> An ABA Advisor to the Drafting Committee reports having established approximately 1500 series limited liability companies under Delaware law.

<sup>8</sup> [TBA – update and source]

1 The growing popularity is also reflected in the following chart, which shows the increasing  
2 number of U.S. jurisdictions that provide for the creation of protected series:  
3  
4

<b>year of enactment</b>	<b>name of enacting jurisdictions</b>	<b>total number of enactments in the year</b>	<b>cumulative total of jurisdictions with protected series provisions</b>
1996	Delaware	1	1
2004	Oklahoma	1	2
2005	Illinois, Nevada, Tennessee	3	5
2008	Iowa	1	6
2009	Puerto Rico, Texas	2	8
2011	District of Columbia	1	9
2012	Kansas	1	10
2013	Missouri, Montana, Utah	3	13
2014	Alabama	1	14
2016	Indiana	1	15

5  
6 Several other jurisdictions are reported as very interested in providing for protected series and as  
7 awaiting the conclusion of this project. In 2017, protected series proponents in two states  
8 contemplated enacting the uniform act even before the Drafting Committee had finished its work  
9 and the had decided whether to approve the act. Eventually, in both states, the proponents  
10 decided to wait for the 2018 legislative session.

11  
12 Although the widespread use and growing popularity of the protected series construct are  
13 undeniable, the causes are not well understood. For the most part, the legal and business  
14 relationships established through protected series can also be established with various structures  
15 involving several limited liability companies.

16  
17 Some situations have been identified in which protected series provide a unique benefit, but  
18 these situations involve very specialized types of arrangements and cannot account for  
19 widespread use and popularity. Some proponents note the potential convenience for regulatory  
20 purposes: A series limited liability company holds a single license or makes one regulatory  
21 filing, and various protected series of the company function under the aegis of that license or  
22 filing.<sup>9</sup>  
23

24 Another explanation is that the series limited liability company provides the first ever off-the-  
25 shelf template for establishing a structure of affiliated businesses. It is debatable whether such a  
26 template increases economic efficiency, provides traps for the unwary, or both. What is not in  
27 doubt is that the protected series construct is now an established part of U.S. business law.

---

<sup>9</sup> This benefit is all-important in the context of some investment funds. *See* Uniform Statutory Trust Entity Act (2009) (Last Amended 2013), Prefatory Note, Introduction.

1 Also not in doubt is that current statutes leave many very practical questions unanswered and  
2 lack important safeguards to protect the public in general and creditors in particular.

3  
4 Part 5. Structure of the Act – A Module to be Enacted  
5 as Part of an Enacting State’s Current Limited Liability Company Statute  
6

7 A protected series is inevitably connected with a limited liability company.<sup>10</sup> Accordingly,  
8 existing provisions for protected series are inserts into a jurisdiction’s existing limited liability  
9 company statute. This act takes the same approach and is designed to work with any existing  
10 limited liability company statute.

11  
12 Part 6. Extrapolation – Leveraging by Analogy  
13 the Rules of an Enacting State’s Limited Liability Company Statute  
14

15 A. The Need for and Meaning of “Extrapolation”

16 A protected series is a business organization,<sup>11</sup> analogous in almost all respects to a limited  
17 liability company. All limited liability company statutes provide rules governing a limited  
18 liability company’s existence, including:

- 19  
20 • non-variable provisions delineating the relationship of a company and its members with  
21 third parties;  
22 • non-variable provisions pertaining to internal affairs (i.e., matters *inter se* the company,  
23 its members, agents, and transferees of its members); and  
24 • variable provisions (“default rules”) that govern issues of internal affairs unless the  
25 operating agreement provides otherwise.<sup>12</sup>  
26

27 A statute providing for protected series needs the same three sets of rules at the “protected series  
28 level.” This act meets that need in four ways, by:

- 29  
30 • stating the rule directly and in a self-contained way,  
31 ○ e.g., Section 301 (stating requirements for associating an asset with a protected  
32 series or series limited liability company);

---

<sup>10</sup> See Section 104(c) (stating that “[a] protected series of a series limited liability company ceases to exist no later than when the company completes its winding up”).

<sup>11</sup> This act provides that “a protected series of a series limited liability company has the same powers and purpose as the company,” Section 104(b), and many limited liability company statutes permit a limited liability company to have, in the words of the uniform act, “any lawful purpose, regardless of whether for profit.” Uniform Limited Liability Company (2006) (Last Amended 2013), Section 108(b). To date, however, using a series limited liability company for non-business purposes is rare, if extant at all.

<sup>12</sup> See, e.g., Uniform Limited Liability Company Act (2006) (Last Amended 2013), Sections 105(b) (pertaining to default rules for inter se matters) and 503 (delineating the rights of a creditor of a member or transferee). A protected series does not have its own operating agreement. Rather, the operating agreement of a series limited liability company governs the internal affairs of a protected series of the company. See Section 106, cmt.

- 1 • expressly applying a rule from the limited liability company statute of an enacting state,  
2 ○ e.g., Section 404 (applying the charging order provision of the enacting state’s  
3 limited liability company statute to judgment creditors of associated members and  
4 protected series transferees);  
5
- 6 • stating the rule in part directly and in part by analogizing to the rule applicable at the  
7 “limited liability company level” – i.e., to a limited liability company under an enacting  
8 state’s limited liability company statute;  
9 ○ e.g., Section 106(d) (providing that, if the operating agreement of a series limited  
10 liability company does not address a matter involving internal affairs, then the  
11 acts governs to the extent applicable, and otherwise the default rules of the limited  
12 liability company statute apply by analogy); and  
13
- 14 • stating the rule solely by analogy to the rule applicable at the series limited liability  
15 company level,  
16 ○ e.g., Sections 106(b) (providing that if the limited liability company statute  
17 “restricts the power of an operating agreement, the restriction applies” by analogy  
18 “to a matter” at the protected series level); 501(4)(B) (providing for dissolution of  
19 a protected series by judicial order “on application by an associated member or  
20 protected series manager of the protected series . . . to the same extent, in the same  
21 manner, and on the same grounds the court would enter an order dissolving a  
22 limited liability company on application by a member of or a person managing the  
23 company”).  
24

25 This Note and the act’s official comments label the analogy approach as “extrapolation,”<sup>13</sup> and  
26 the mechanics of extrapolation are straightforward. Extrapolation occurs only when expressly  
27 invoked by some provision of this act and, when invoked, proceeds according to the following  
28 paradigm:  
29

- 30 • a protected series is treated *as if it were* a separate limited liability company;
- 31 • any associated member of the protected series is treated *as if it were* a member of  
32 the separate, hypothetical company;
- 33 • any protected series transferee of the protected series is treated *as if it were* a  
34 transferee of the separate, hypothetical company;
- 35 • any protected series transferable interest of the protected series is treated *as if it*  
36 *were* a transferable interest of the separate, hypothetical company;
- 37 • a series manager of the protected series is treated *as if it were* a manager of the  
38 separate, hypothetical company;
- 39 • any asset of the protected series is treated *as if it were* an asset of the separate,  
40 hypothetical company, whether or not the asset is an associated asset of the  
41 protected series; and

---

<sup>13</sup> Merriam Webster defines “extrapolate” in relevant part to mean “to infer (values of a variable in an unobserved interval) [i.e., issues at the protected series level] from values within an already observed interval [i.e., default rules at the limited liability company level]”, <http://www.merriam-webster.com/dictionary/extrapolate>, last visited 5/17/16.

- any creditor or other obligee of the protected series is treated *as if it were* a creditor or obligee of the separate, hypothetical company.

Extrapolation provides two significant advantages. First, the approach avoids burdening this act with lengthy provisions largely duplicative of provisions in the relevant limited liability company statute. Second, where appropriate the approach imports to the protected series level the same policy choices reflected at the limited liability company level.

**B. An Additional Benefit – Parallelism in Concept and Terminology**

Extrapolation has an additional benefit. The approach makes possible parallelism in concept and terminology.

<b>concept</b>	<b>defined term pertaining to series limited liability company</b>	<b>defined term pertaining to a protected series</b>
person with both governance and economic rights	member	associated member
economic rights	transferable interest (rights to distributions from the series limited liability company)	protected series transferable interest (rights to distributions from a protected series)
owner of solely economic rights	transferee	protected series transferee <sup>14</sup>
owned assets	property of the series limited liability company	assets of a protected series
		associated asset/ non-associated asset of a protected series <sup>15</sup>

**Part 7. Non-Liability and Non-Recourse Rules and the Act’s Novel Approach to Horizontal Shields**

**A. The Two-Fold Nature of a Liability Shield**

An entity’s traditional liability shield – i.e., the vertical shield – protects an entity’s owners from automatic, status-based liability for the entity’s debts and thereby protects each owner’s personal assets from creditors of the entity. Thus, the shield has two parts: a non-liability rule (no status-based liability) and a non-recourse rule (no creditor recourse against assets). This distinction is immaterial in the context of a vertical shield but is essential to understanding this act’s novel

<sup>14</sup> Although a series limited liability company may own a protected series transferable interest of a protected series of the company, the defined term, “protected series transferee,” does not include the company. *See* Section 303(d), cmt.

<sup>15</sup> A protected series can own an asset without the asset being associated with the protected series. This act labels this category of property as a “non-associated asset.” Only an associated asset is protected by the internal shields of a protected series. *See* Sections 301 and 404.

1 approach to horizontal shields.

2  
3 B. Horizontal Shields – Non-Liability and Non-Recourse Rules Distinguished  
4 to Create an Important Inducement to Good Recordkeeping

5  
6 Like the traditional “vertical shield,” a protected series’ horizontal shield contains both a non-  
7 liability rule and a non-recourse rule. This act treats these rules separately to create an important  
8 inducement to good recordkeeping.

- 9
- 10 • under the non-liability rule (Section 401(b)):
    - 11 ○ a protected series is not liable for the debts of the series limited liability company
    - 12 or any other protected series of the company and *vice versa*.
    - 13
  - 14 • under the non-recourse rule (Sections 301 and 404):
    - 15 ○ only an *associated* asset of a protected series is shielded against collection efforts
    - 16 of judgment creditors of the series limited liability company or of any other
    - 17 protected series of the company, and the same is true for assets of the company;
    - 18 and
    - 19 ○ *association* is accomplished by creating and maintaining required records.<sup>16</sup>
    - 20

21 C. The Novel and Important Inducement – “Asset by Asset Exposure”  
22 under Sections 404 and 301

23  
24 Thus, even when the non-liability rule is firmly in place for a protected series,<sup>17</sup> the non-recourse  
25 rule for each asset of the protected series is subject to challenge on the grounds that: (i) the  
26 relevant records are deficient; (ii) the asset is therefore non-associated; and (iii) as a result the  
27 asset is “up for grabs” not only by a creditor of the protected series but also by any judgment  
28 creditor of the series limited liability company and any judgment creditor of any other protected  
29 series of the company.<sup>18</sup>

30  
31 EXAMPLE: Conference, LLC, a series limited liability company, has two  
32 protected series, Conference, LLC – Protected Series Alpha (“Alpha”) and  
33 Conference, LLC – Protected Series Beta (“Beta”). Beta has several valuable  
34 assets, each of which has been properly documented and thereby associated with  
35 Beta (Section 301) since Beta first acquired it. A judgment creditor of Alpha  
36 attempts to levy on an associated asset of Beta. The attempt will fail for two  
37 reasons: (i) the attempt is an effort to hold Beta liable for Alpha’s debts, which  
38 contravenes the non-liability rule; and (ii) the non-recourse rule protects Beta’s  
39 associated assets from claims except for claims asserted by Beta’s creditors.

40  
41 EXAMPLE: Same facts, except that, when Alpha’s judgment creditor attempts to

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<sup>16</sup> See Section 301(b)-(c).

<sup>17</sup> Like the non-liability rule of a vertical shield, the non-liability rule of a horizontal shield is subject to “piercing” claims. See Section 402.

<sup>18</sup> The situation is the same for assets of the series limited liability company itself.

1           levy on Beta’s property, one of Beta’s assets is a “non-associated asset.”  
2           Although Beta is not liable on the judgment against Alpha and the asset remains  
3           Beta’s property, under Section 404 the asset is nonetheless subject to levy by the  
4           judgment creditor of Alpha.<sup>19</sup>  
5

6           This asset-by-asset exposure does not exist under any current protected series statutes, because  
7           no current statute treats the non-liability and non-recourse rules separately with regard to  
8           horizontal shields. Thus, this act’s inducement to good recordkeeping is unique.  
9

#### 10                               Part 8. Overcoming the Shields 11

12           “Piercing the veil” is the foremost doctrine for overcoming the traditional, vertical shield  
13           separating an entity from its owners. When a creditor succeeds with a piercing claim, the shield  
14           falls *in toto*. That is, all the owner’s non-exempt assets are available to the judgment creditor of  
15           the entity.  
16

17           The piercing doctrine (and any related theories that conflate an organization and its owners)  
18           apply to the vertical shield between a series limited liability company and its members and to the  
19           vertical shield between a protected series and its associated members. Likewise, the piercing  
20           doctrine (and related theories of affiliate liability) will apply to the internal, horizontal shields –  
21           *i.e.*, in the proper circumstances, a court will disregard the internal shields, negate the non-  
22           liability rule, and thus render the non-recourse rule moot. For a detailed discussion of this issue,  
23           see Section 402, cmt.

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<sup>19</sup> If a judgment creditor of Alpha or the series limited liability company successfully levies on  
the asset, Beta may have an unjust enrichment claim against the judgment debtor and a damage  
action against the person responsible for the recordkeeping that, being deficient, caused the item  
to be non-associated.

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2

Part 9. Traditional and Internal Shields Compared in Tabular Form

<b>type of shield</b>	<b>what the shield separates</b>	<b>non-liability rule</b>	<b>non-recourse rule</b>	<b>rules for overcoming the shield</b>
<b>traditional, vertical corporate/LLC liability shield</b>	an entity from its owners	stated expressly	unstated, but ineluctably implied	piercing – shield overcome <i>in toto</i>
<b>internal, horizontal shields in a series limited liability company</b>	one set of assets/ operations from other sets of assets/operations	stated expressly	stated expressly but applicable only as to associated assets	piercing – shield overcome <i>in toto</i>  “asset by asset” exposure under Section 404



Part 10. Clarity and Safeguards of this Act Compared  
to Current Protected Series Statutes

In comparison with existing statutes, this act provides far greater transparency to the public and far greater clarity as to the myriad legal questions raised by the protected series concept. The following chart identifies 21 key issues and compares this act with the seminal Delaware provision on protected series and with the protected series provisions of Illinois and Texas, the two most clearly developed statutes from across the non-uniform spectrum of current law.

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Is a separate public filing necessary to establish each protected series?	Yes; § 201(b)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(d)	No
Is protected series defined as a legal person?	Yes; § 102(7)	Yes; DEL. CODE ANN. tit. 6, § 18-101(12)	No	No
Is the duration of protected series expressly limited to the duration of series limited liability company?	Yes; § 105(c)(1)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(m)	Yes; TEX. BUS. ORGS. CODE § 101.616(1)
Must name of protected series include name of series limited liability company?	Yes; § 202	No	Yes; 805 ILL. COMP. STAT. 180/37-40(c)	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute specify rules for disregarding the internal shields that protect the assets of one protected series from the creditors of another, other than a general recordkeeping requirement?	Yes; § 401	No	No	No
Are there “asset by asset” consequences for assets not properly associated with a protected series, even if the internal shields remain in place?	Yes; § 402	No	No	No
Does the statute preclude associating property after a claim against the property has been made?	Yes; § 402	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Do special recordkeeping requirements apply to transfers between a series limited liability company and a protected series of the company and between protected series of the company?	Yes; § 301(b)	No	No	No
If the statute expressly permits associated assets to be held by a nominee, etc., does the statute limit permission in any way?	Yes; § 301(c)	No; DEL. CODE ANN. tit. 6, § 18-215(b)	No; 805 ILL. COMP. STAT. 180/37-40(b)	No; TEX. BUS. ORGS. CODE § 101.603(a)
Does the statute address specifically the rights of judgment creditors of associated members?	Yes; 403(1)	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute expressly and directly require membership in the limited liability company as prerequisite to being associated member of protected series?	Yes; § 103(a)(2)	No	No	No
Does the statute address how provisions in the limited liability company statute apply at the protected series level?	Yes; §§ 103, 107(c)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(j)	Yes; TEX. BUS. ORGS. CODE §§ 101.609, 101.617
Does the statute address whether associated members of a protected series have veto rights to operating agreement amendments affecting the protected series?	Yes; § 304(d)	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute contain rules for protected series that the operating agreement cannot vary?	Yes; § 109	No	No	Yes, but limitation applies only to requirements for maintaining internal shields; TEX. BUS. ORGS. CODE § 101.054(a)(2) (referring to TEX. BUS. ORGS. CODE § 101.602(b))
Does the statute provide for registering foreign protected series to do business in the state?	Yes; § 604	No	Yes; 805 ILL. COMP. STAT. 180/37-40(o)	No
Does the statute require foreign protected series doing business in the state to comply with same name requirements as domestic protected series?	Yes; § 604(c)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(c)	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute require a foreign protected series to disclose either (i) information regarding the foreign series limited liability company and other foreign protected series of the company comparable to the information available from the public record regarding a domestic protected series or (ii) the identity of an individual who has this information?	Yes; §§ 605, 604(b)(2)	No	No	No
Does the statute permit a court to use enacting state's piercing law on foreign protected series if foreign state's law "repugnant" to the public policy of the enacting state?	Yes; § 601(b)	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute expressly address whether the series limited liability company may own an interest in a protected series of the company?	Yes; § 303(a)	No	No	No

1 **UNIFORM PROTECTED SERIES ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Protected  
5 Series Act.

6 ***Legislative Note:** Because this act is intended to be inserted into a state’s current limited  
7 liability company statute, an enacting state should keep in mind the following three points, as  
8 well as the Legislative Note to Section 102 (which explains how this act relies on specified  
9 definitions in an enacting state’s limited liability company act).*

10  
11 *1. An enacting state should replace all bracketed references to “this [act]” with the state’s term  
12 of art for a captioned part of a statute. For example, an enacting state that uses “article” as the  
13 term of art will change “[act]” to “article”. For example, this section would be revised to be:  
14 “**SECTION 101. SHORT TITLE.** This article may be cited as the Uniform Protected Series  
15 Act.”*

16  
17 *2. Likewise, an enacting state should replace this act’s many bracketed reference to “article”  
18 with whatever term of act the state uses to refer to a separately captioned subpart of a statute. In  
19 a uniform act, the word would be “part”.*

20  
21 *3. This act includes bracketed instructions to cite specified provisions of an enacting state’s  
22 limited liability company statute. If an enacting state has adopted a “hub and spoke” approach  
23 to business organization statutes, the instructions should be read where appropriate to include  
24 reference to the hub and any other centralized provisions. In what instances that reading is  
25 appropriate depends on how broad the hub is. Using the Uniform Business Organizations Code  
26 as an example, the hub encompasses filing requirements, name requirements, registered agents,  
27 foreign entities, and administrative dissolution, and another centralized provision addresses  
28 entity transactions (e.g., mergers, conversions).*

29  
30 **SECTION 102. DEFINITIONS.** In this [act]:

31 (1) “Asset” means property:

32 (A) in which a series limited liability company or protected series has rights; or

33 (B) as to which the company or protected series has the power to transfer rights.

34 (2) “Associated asset” means an asset that meets the requirements of Section 301.

35 (3) “Associated member” means a member that meets the requirements of Section 302.



1           (4) “Foreign protected series” means an arrangement, configuration, or other structure  
2 established by a foreign limited liability company which has attributes comparable to a protected  
3 series established under this [act]. The term applies whether or not the law under which the  
4 foreign company is organized refers to “protected series”.

5           (5) “Foreign series limited liability company” means a foreign limited liability company  
6 that has at least one foreign protected series.

7           (6) “Non-associated asset” means:

8                   (A) an asset of a series limited liability company which is not an associated asset  
9 of the company; or

10                   (B) an asset of a protected series of the company which is not an associated asset  
11 of the protected series.

12           (7) “Person” includes a protected series.

13           (8) “Protected series”, except in the phrase “foreign protected series”, means a protected  
14 series established under Section 201.

15           (9) “Protected series manager” means a person under whose authority the powers of a  
16 protected series are exercised and under whose direction the activities and affairs of the protected  
17 series are managed under the operating agreement and [cite this state’s limited liability company  
18 statute as amended by this act].

19           (10) “Protected series transferable interest” means a right to receive a distribution from a  
20 protected series.

21           (11) “Protected series transferee” means a person to which all or part of a protected series  
22 transferable interest of a protected series of a series limited liability company has been  
23 transferred, other than the company. The term includes a person that owns a protected series

1 transferable interest as a result of ceasing to be an associated member of a protected series.

2 (12) “Series limited liability company”, except in the phrase “foreign series limited

3 liability company”, means a limited liability company that has at least one protected series.

4 **Legislative Note:** *Because this act is intended to be inserted into a state’s current limited*  
5 *liability company statute, this section does not define terms already defined in the Uniform*  
6 *Limited Liability Company Act (2006) (Last Amended 2013). This act presupposes the following*  
7 *definitions from that act:*

8

defined term	Uniform Limited Liability Company Act (2006) (Last Amended 2013) Section
Acquired entity	1001(1)
Acquiring entity	1001(2)
Converted entity	1001(4)
Converting entity	1001(5)
Foreign limited liability company	102(5)
Jurisdiction of formation	102(7)
Limited liability company	102(8)
Operating agreement	102(13)
Manager	102(9)
Member	102(11)
Person	102(15)
Property	12(17)
Record	102(18)
Sign	102(21)
State	102(22)
Transfer	102(23)
Transferable interest	102(24)
Transferee	102(25)

9

10 *Each enacting state should determine whether its limited liability company statute defines the*  
11 *terms listed in this Legislative Note. If a state’s limited liability company statute lacks a*  
12 *particular term entirely, the state should adopt the term as defined in the Uniform Limited*  
13 *Liability Company Act (2006) (Last Amended 2013), Section 102. If a state act defines a*  
14 *particular concept but uses a different label – e.g., “limited liability company interest” instead*  
15 *of “transferable interest” – the state should modify this act accordingly.*

16

17 *In both the 2006 and 2013 versions of the Uniform Limited Liability Company Act, some of the*  
18 *above listed definitions appear in Section 1001, which states that it defines terms for use “[i]n*  
19 *this [article]” (pertaining to entity transactions). When adopting this act, a state that has*  
20 *adopted either the 2006 or 2013 version should revise Section 1001 to begin: “In this [article]*  
21 *and [cite the article containing this act]”. See also Section 101, Legislative Note #3.*

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## Comment

“**Asset**” [1] – This definition derives from Uniform Commercial Code (“UCC”) § 9-203(b)(2) and is intended to have the same meaning. The UCC provision states as a precondition to the enforceability of a security interest in collateral that “the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.”

Property that is subject to a security interest, mortgage, or other lien is nonetheless an asset under this definition. Moreover, an asset remains an asset even if “under water” (i.e., the amount owed and secured by the asset exceeds the value of the asset).

“**Associated asset**” [2] – This definition is key to establishing and delineating the “internal shields” provided by Section 401(b). Even if a protected series is not liable for the debts of its series limited liability company or any other protected series of the company (i.e., no affiliate liability), an asset owned by a protected series is available for creditors of the company or another protected series of the company unless the asset is an associated asset of the protected series. Section 301 delineates the recordkeeping required for an asset to obtain and maintain “associated asset” status. See also Section 404 (providing that only an associated asset of a protected series is shielded from claims from creditors of the series limited liability company and other protected series of the company). The same rules apply to assets owned by a series limited liability company.

“**Associated member**” [3] – Except for requiring that a person be a member of a series limited liability company in order to be an associated member of a protected series of the company, this act does not determine how a member becomes an associated member of a protected series. The operating agreement must address this important question. See Section 302(b).

“**Foreign protected series**” [4] – This definition is derived from Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 102(5), which defines “foreign limited liability company” as “an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited liability company if formed under the law of this state.” This act characterizes a domestic protected series as a person, Section 103, but this definition omits that characterization. Most current statutes do not address the characterization issue.

“**Person**” [7] – The definition of “person” in ULLCA (2006) (Last Amended 2013), Section 102(15) does not expressly include a protected series, although that definition’s catchall term – “other ... commercial entity” – might apply.

“**Protected series manager**” [9] – This definition derives from Uniform Business Organization Code (2013), Section 1-102(18)(K) (catchall provision in definition of “governor”).

“**Protected series transferee**” [11] – A protected series transferee is analogous to a transferee of a membership interest, see ULLCA (2006) (Last Amended 2013), Section 102(25), and the definition includes an associated member of a protected series to whom is transferred a

1 protected series transferable interest owned by another person. For an explanation of why  
2 definition except the series limited liability company, see Section 303(d), cmt.

3  
4 **“Series limited liability company” [12]** – This term is shorthand for “a limited liability  
5 company that at the relevant moment has at least one protected series.” Thus, a limited liability  
6 company might:

- 7
- 8 • on Day 1, become a series limited liability company by establishing one or more  
9 protected series;
- 10 • on Day 2, cease to be a series limited liability company, having dissolved, wound up,  
11 and terminated all its protected series; and
- 12 • on Day 3, become anew a series limited liability company by establishing one or  
13 more protected series.

14  
15 **SECTION 103. NATURE OF PROTECTED SERIES.** A protected series of a series  
16 limited liability company is a person distinct from:

17 (1) the company, subject to Sections 104(c), 501(1), and 502(d);

18 (2) another protected series of the company;

19 (3) a member of the company, whether or not the member is an associated member of the  
20 protected series;

21 (4) a protected series transferee of a protected series of the company; and

22 (5) a transferee of a transferable interest of the company.

### 23 **Comment**

24  
25 Section 104(c) provides that a protected series cannot exist on its own; therefore, a  
26 protected series is not entirely distinct from the series limited liability company on whose  
27 existence the protected series depends. Section 501(1) reflects this reality by stating that the  
28 dissolution of a series limited liability company causes the dissolution of each of the company’s  
29 protected series. Section 502(d) reflects this reality by providing that a series limited liability  
30 company has not completed its own winding up until the company has completed the winding up  
31 of each of the protected series of the company.

### 32 33 **SECTION 104. POWERS AND DURATION OF PROTECTED SERIES.**

34 (a) A protected series of a series limited liability company has the capacity to sue and be  
35 sued in its own name.

1 (b) Except as otherwise provided in subsections (c) and (d), a protected series of a series  
2 limited liability company has the same powers and purposes as the company.

3 (c) A protected series of a series limited liability company ceases to exist not later than  
4 when the company completes its winding up.

5 (d) A protected series of a series limited liability company may not:

6 (1) be a member of the company;

7 (2) establish a protected series; [or]

8 (3) except as permitted by law of this state other than this [act], have any purpose  
9 or power that the law of this state other than this [act] prohibits a limited liability company from  
10 doing or having[.]; [or]

11 [(4) ....].  
12

13 **Legislative Note:** Section 104(d)(4) is provided in case an enacting state decides that a power, a  
14 purpose, or conduct acceptable for a limited liability company is not acceptable for a protected  
15 series.

### 16 **Comment**

17  
18  
19 **Subsections (a), (c) & (d)** – These provisions are non-variable. See Section 107(a)(3)-  
20 (5).

21  
22 **Subsection (a)** – The capacity stated here distinguishes a series limited liability company  
23 and its protected series from the protected cell captive insurance companies [PCC] discussed in  
24 *Pac Re 5-AT v. Amtrust N. Am., Inc.*, No. CV-14-131-BLG-CSO, 2015 WL 2383406, at \*4 (D.  
25 Mont. May 13, 2015) (stating that “absent a statutory grant to the contrary, a protected cell does  
26 not have the capacity to sue and be sued independent of the larger PCC”).  
27

28 **Subsection (b)** – Under this provision, if the operating agreement of a series limited  
29 liability company restricts the company’s power, purpose, or both, the restriction applies to each  
30 protected series of the company. The provision is a default rule.  
31

32 **Subsection (c)** – A protected series may not exist outside the context of the series limited  
33 liability company that established the protected series, except as a result of a merger under  
34 Section 604 (in which a protected series may be “relocated” from a series limited liability  
35 company that does not survive the merger to the series limited liability company that does).  
36 Generally, an organization’s disappearance as a result of a merger is not treated as a dissolution,

1 and the merger does not effect the winding up of the organization. See, e.g., Uniform Business  
2 Organization Code (2015), Section 2-206(b) (“Except as otherwise provided in the organic law  
3 or organic rules of a merging entity, a merger under this [part] does not give rise to any rights  
4 that an interest holder, governor, or third party would have upon a dissolution, liquidation, or  
5 winding up of the merging entity.”)  
6

7 **Subsection (d)** – The prohibitions stated in this subsection leave available a wide range  
8 of activities and affairs. For example, subject to a contrary provision in the operating agreement,  
9 every protected series, like every limited liability company, has the power to make contracts and  
10 own real and other property. These powers are key attributes to the concept of a legal person, are  
11 possessed by every limited liability company regardless of its state of organization, and  
12 therefore, under this provision, are possessed by every protected series established under this act.  
13

14 **Subsections (d)(1)-(2)** – These provisions preclude structures that would be painfully  
15 Byzantine or would push the extrapolation construct beyond any understandable application. For  
16 a discussion of the extrapolation construct, see Prefatory Note, Part 6. However, these  
17 provisions do not prevent a protected series of a series limited liability company from being a  
18 manager of the company or a protected series manager of another protected series of the  
19 company or acting otherwise as an agent for the company or other protected series.  
20

21 **Subsection (d)(3)** – A limited liability company may not use a protected series to evade a  
22 requirement of other law. This provision’s introductory language – “[e]xcept as permitted by  
23 law of this state ...” – refers to situations in which state law authorizes a protected series of a  
24 series limited liability company to operate under the auspices of a license obtained or regulatory  
25 filing made by the company in the company’s name.  
26

27 **SECTION 105. GOVERNING LAW.** The law of this state governs:

28 (1) the internal affairs of a protected series, including:

29 (A) relations among any associated members of the protected series;

30 (B) relations among the protected series and:

31 (i) any associated member;

32 (ii) the protected series manager; or

33 (iii) any protected series transferee;

34 (C) relations between any associated member and:

35 (i) the protected series manager; or

36 (ii) any protected series transferee;

1 (D) the rights and duties of a protected series manager;

2 (E) governance decisions affecting the activities and affairs of the protected series

3 and the conduct of those activities and affairs; and

4 (F) procedures and conditions for becoming an associated member or protected

5 series transferee;

6 (2) the relations between a protected series of a series limited liability company and each

7 of the following:

8 (A) the company;

9 (B) another protected series of the company;

10 (C) a member that is not an associated member of the protected series;

11 (D) a protected series manager that is not a protected series manager of the

12 protected series; and

13 (E) a protected series transferee that is not a protected series transferee of the

14 protected series;

15 (3) the liability of a person for a debt, obligation, or other liability of a protected series of

16 a series limited liability company if the debt, obligation, or liability is asserted solely by reason

17 of the person being or acting as:

18 (A) an associated member, protected series transferee, or protected series manager

19 of the protected series;

20 (B) a member of the company which is not an associated member of the protected

21 series;

22 (C) a protected series manager that is not a protected series manager of the

23 protected series;

1 (D) a protected series transferee that is not a protected series transferee of the  
2 protected series;

3 (E) a manager of the company; or

4 (F) a transferee of a transferable interest of the company;

5 (4) the liability of a series limited liability company for a debt, obligation, or other  
6 liability of a protected series of the company if the debt, obligation, or liability is asserted solely  
7 by reason of the company:

8 (A) having delivered to the [Secretary of State] for filing a protected series  
9 designation pertaining to the protected series;

10 (B) being or acting as a protected series manager of the protected series;

11 (C) having the protected series be or act as a manager of the company; or

12 (D) owning a protected series transferable interest of the protected series;

13 (5) the liability of a protected series of a series limited liability company for a debt,  
14 obligation, or other liability of the company or of another protected series of the company if the  
15 debt, obligation, or liability is asserted solely by reason of:

16 (A) the protected series:

17 (i) being a protected series of the company or having as a protected series  
18 manager the company or another protected series of the company; or

19 (ii) being or acting as a protected series manager of another protected  
20 series of the company or a manager of the company; or

21 (B) the company owning a protected series transferable interest of the protected  
22 series.



1 **Comment**

2 **Paragraph (1)** – The concept of “internal affairs” presupposes an organization that is a  
3 legal person and thus applies to a protected series under this act. *See* Section 103 (stating that  
4 “[a] protected series ... is a person”). Because the protected series is a novel construct, this  
5 paragraph details some aspects of a protected series’ internal affairs. For a detailed discussion of  
6 “internal affairs,” see Uniform Limited Liability Company Act (2006) (Last Amended 2013),  
7 Section 104, Paragraph (1), cmt.  
8

9 **Paragraph (2)** – Although the relationships listed in this provision are not within the  
10 internal affairs of a protected series, they are part of the internal affairs of a series limited  
11 liability company and therefore subject to the operating agreement. *See* Uniform Limited  
12 Liability Company Act (2006) (Last Amended 2013), Section 105(a), cmt. This provision is  
13 included for the avoidance of doubt.  
14

15 **Paragraph (3)** – This provision chooses the law of the enacting state to govern matters  
16 pertaining to the vertical shields provided by this act. For an explanation of vertical shields, see  
17 Prefatory Note, Part 7-A and Section 401, comment.  
18

19 **Paragraphs (4)-(5)** – These provisions choose the law of the enacting state to govern  
20 matters pertaining to the horizontal shields provided by this act. For an explanation of horizontal  
21 shields, see Prefatory Note, Part 7 and Section 401, comment.  
22

23 **SECTION 106. RELATION OF OPERATING AGREEMENT, THIS [ACT], AND**  
24 **[LIMITED LIABILITY COMPANY STATUTE].**

25 (a) Except as otherwise provided in this section and subject to Sections 107 and 108, the  
26 operating agreement of a series limited liability company governs:

27 (1) the internal affairs of a protected series, including:

28 (A) relations among any associated members of the protected series;

29 (B) relations among the protected series and:

30 (i) any associated member;

31 (ii) the protected series manager; or

32 (iii) any protected series transferee;

33 (C) relations between any associated member and:

34 (i) the protected series manager: or

1 (ii) any protected series transferee;

2 (D) the rights and duties of a protected series manager;

3 (E) governance decisions affecting the activities and affairs of the  
4 protected series and the conduct of those activities and affairs; and

5 (F) procedures and conditions for becoming an associated member or  
6 protected series transferee;

7 (2) relations among the protected series, the company, and any other protected  
8 series of the company;

9 (3) relations between:

10 (A) the protected series, its protected series manager, any associated  
11 member of the protected series, or any protected series transferee of the protected series; and

12 (B) a person in the person's capacity as:

13 (i) a member of the company which is not an associated member of  
14 the protected series;

15 (ii) a protected series transferee or protected series manager of  
16 another protected series; or

17 (iii) a transferee of the company.

18 (b) If [the limited liability company statute] restricts the power of an operating  
19 agreement, the restriction applies to a matter under this [act] in accordance with Section 108.

20 (c) If law of this state other than this [act] imposes a prohibition, limitation, requirement,  
21 condition, obligation, liability, or other constraint on a limited liability company, a member,  
22 manager, or other agent of the company, or a transferee of the company, except as otherwise  
23 provided in law of this state other than this [act], the constraint applies in accordance with

1 Section 108.

2 (d) Except as otherwise provided in Section 107, if the operating agreement of a series  
3 limited liability company does not provide for a matter described in subsection (a) in a manner  
4 permitted by this [act], the matter is determined in accordance with the following rules:

5 (1) To the extent this [act] addresses the matter, this [act] governs.

6 (2) To the extent this [act] does not address the matter, [cite this state’s limited  
7 liability company statute] governs the matter in accordance with Section 108.

8 **Comment**

9 A protected series does not have an operating agreement of its own, so the operating  
10 agreement of a series limited liability company must address issues pertaining to the company’s  
11 protected series. An operating agreement may do so in its main body, through a different exhibit  
12 or appendix for each protected series, through an exhibit or appendix applicable all protected  
13 series, or through some combination.

14  
15 Most limited liability company statutes permit oral and implied-in-fact operating  
16 agreements. *See, e.g.*, Uniform Limited Liability Company Act (2006) (Last Amended 2013),  
17 Section 102(13) (defining operating agreement as an agreement among all the members,  
18 “whether oral, implied, in a record, or in any combination thereof”). However, given the  
19 complexity inherent in the protected series construct, prudence demands a written operating  
20 agreement – and, moreover, one not subject to amendment except through a signed writing. *See*  
21 Uniform Limited Liability Company Act (2006) (Last Amended 2013), Sections 105(4) and  
22 107(a) and comments to each.

23  
24 Unless prohibited by the operating agreement, associated members of a protected series  
25 may make contracts among themselves pertaining to the protected series. To the extent  
26 permitted by other law (principally the law of contracts), such contracts bind the parties but have  
27 no effect on the operating agreement or the rights and duties of members of the series limited  
28 liability company who are not party to the agreement (whether or not the non-party member is an  
29 associated member of the protected series).

30  
31 **Subsection (a)** – This provision derives from Uniform Limited Liability Company Act  
32 (2006) (Last Amended 2013), Section 105(a).

33  
34 **Subsection (a)(1)** – For a discussion of how the concept of internal affairs applies to a  
35 protected series, see Section 105(1), cmt.

36  
37 **Subsection (a)(2)** – *See* the comment to Subsection (a)(3)

38

1           **Subsection (a)(3)** – These provisions focus on relationships involving, on the one hand, a  
2 protected series, its protected series manager, associated members, and protected series  
3 transferees and, on the other hand, other persons “internal” to a series limited liability company.  
4 Because a protected series exists within (i.e., under the aegis of) a series limited liability  
5 company and such company’s operating agreement governs the company’s internal affairs, this  
6 provision is arguably unnecessary. It is included for the avoidance of doubt.

7  
8           **Subsection (b)** – This subsection is an extrapolation provision. *See* Prefatory Note, Part  
9 6. The provision’s introductory language – “except as otherwise provided by law of this state  
10 other than this [act]” – refers to situations in which state law authorizes a protected series of a  
11 series limited liability company to operate under the auspices of a license obtained or regulatory  
12 filing made by the company in the company’s name. *Cf.* Section 104(d)(3), cmt.

13  
14           **Subsection (c)** – This provision uses extrapolation to carry company-level constraints  
15 through to the protected series level. For a general explanation of extrapolation, see Prefatory  
16 Note, Part 6.

17  
18           **Subsection (d)** – This subsection is an extrapolation provision pertaining to internal  
19 affairs of a protected series. For a general explanation of extrapolation, see Prefatory Note, Part  
20 6.

21  
22           All limited liability company statutes provide default rules to govern issues of internal  
23 affairs that a limited liability company’s operating agreement omits to address. *See, e.g.,*  
24 Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 105(b).  
25 Comparable gaps can exist at the protected series level, but this act does not provide a  
26 comprehensive set of “gap fillers.” Instead, if a question arises within the domain of subsection  
27 (a) and neither the operating agreement nor this act provides an answer, the answer is determined  
28 by extrapolating to the protected series level the rule for the analogous situation at the limited  
29 liability company level. Section 108 provides the extrapolation mechanics – i.e., treating a  
30 protected series as if it were a limited liability company, an associated member of the protected  
31 series as if it were a member of that “as if” limited liability company, etc. *See* Prefatory Note,  
32 Part 6.

33  
34           Thus, together with Section 108 this provision creates a paradigm for determining the  
35 rules applicable to a matter within subsection (a). The following list states the paradigm; “non-  
36 variable provision” means a provision of an enacting state’s limited liability company statute  
37 (including this act as inserted in the statute) which an operating agreement may not vary or  
38 waive.

- 39  
40           • If a non-variable provision of the limited liability company statute (including this act  
41 as inserted into that statute) addresses the matter, the provision governs to the extent  
42 applicable.
- 43  
44           • If the matter is not exhaustively addressed by one or more non-variable provisions,  
45 the operating agreement governs to the extent applicable and effective. (If a term of  
46 an operating agreement seeks to vary a non-variable provision, the term is

1           ineffective.)

- 2
- 3           • If the matter is not exhaustively addressed by one or more non-variable provisions,  
4           the operating agreement, or a combination thereof, this act’s variable provisions  
5           govern to the extent applicable.
  - 6
  - 7           • If the matter is not exhaustively addressed by one or more non-variable provisions,  
8           the operating agreement, this act’s variable provisions, or a combination thereof, the  
9           provisions of the limited liability company statute govern the matter using the  
10          extrapolation rule stated in Section 108.

11

12          To this paradigm must be added one other situation. Suppose the terms of the operating  
13          agreement purport to comprehensively address a subsection (a) matter (i.e., an internal affair) in  
14          a way permitted by this act, but the terms (i) are ambiguous; (ii) incomplete (i.e., a gap exists); or  
15          (iii) are called into question due to some generally applicable principle of contract or other law  
16          (e.g, waiver). How should the court handle the situation?

- 17
- 18          • Resolve the matter solely according to contract and other law applicable law, i.e., as if  
19          extrapolation did not exist?
  - 20          or
  - 21          • Declare the operating agreement ineffective on the point and rely on extrapolation  
22          under this section?

23

24          This act does not directly answer the question, but for reasons of logic and policy the  
25          answer should be the same as if the problem existed at the company level of a series limited  
26          liability company or with the operating agreement of an ordinary limited liability company.

27

28          This provision applies only to matters within subsection (a). For provisions providing for  
29          extrapolation as to other matters, see Sections 304(c), 304(f), 501(4)(A), 502(a), and 503(2).

30

31          **SECTION 107. ADDITIONAL LIMITATIONS ON OPERATING AGREEMENT.**

32          (a) An operating agreement may not vary the effect of:

33                  (1) this section;

34                  (2) Section 103;

35                  (3) Section 104(a);

36                  (4) Section 104(b) to provide a protected series a power beyond the powers [cite  
37          this state’s limited liability company statute] provides a limited liability company;

38                  (5) Section 104(c) or (d);

- 1 (6) Section 105;
- 2 (7) Section 106;
- 3 (8) Section 108;
- 4 (9) Section 201, except to vary the manner in which a limited liability company
- 5 approves establishing a protected series;
- 6 (10) Section 202;
- 7 (11) Section 301;
- 8 (12) Section 302;
- 9 (13) Section 303(a) or (b);
- 10 (14) Section 304(c) or (f);
- 11 (15) Section 401 except to decrease or eliminate a limitation of liability stated in
- 12 Section 401;
- 13 (16) Section 402;
- 14 (17) Section 403;
- 15 (18) Section 404;
- 16 (19) Section 501(1), (4), and (5);
- 17 (20) Section 502, except to designate a different person to manage winding up;
- 18 (21) Section 503;
- 19 (22) [Article] 6;
- 20 (23) [Article] 7;
- 21 (24) [Article 8], except to change:
  - 22 (A) the manner in which a series limited liability company may elect
  - 23 under Section 803(a)(2) to be subject to this [act]; or

1 (B) the person that has the right to sign and deliver to the [Secretary of  
2 State] for filing a record under Section 803(b)(2); or

3 (25) a provision of this [act] pertaining to:

4 (A) registered agents; or

5 (B) the [Secretary of State], including provisions pertaining to records  
6 authorized or required to be delivered to the [Secretary of State] for filing under this [act].

7 (b) An operating agreement may not unreasonably restrict the duties and rights under  
8 Section 305 but may impose reasonable restrictions on the availability and use of information  
9 obtained under Section 305 and may define appropriate remedies, including liquidated damages,  
10 for a breach of any reasonable restriction on use.

#### 11 **Comment**

12  
13 Section 107(b) extrapolates to the protected series level limitations imposed by an  
14 enacting state’s limited liability company statute on the power of an operating agreement. This  
15 section states restrictions that Section 107 does not encompass.

16  
17 Occasionally the comments to this act refer to a variable provision as a “default rule” and  
18 a mandatory provision as “non-variable.” These references are merely to draw attention to the  
19 default/non-variable distinction in particular contexts and have neither the intent nor the power to  
20 affect the default/non-variable status of the many provisions of this act whose comments lack a  
21 comparable reference.

22  
23 **Subsection (a)** – Solely to provide a general sense of the prohibitions stated in this  
24 subsection, following are the captions for the provisions listed here. To understand the  
25 prohibitions stated in this subsection, it is of course necessary to read a listed provision to  
26 understand what the prohibition entails.  
27

<b>subsection (a) paragraph number</b>	<b>Section Number of Non-Variable Provision</b>	<b>Caption (or description if not full section)</b>
2	Section 103	Nature of Protected Series
3	Section 104(a)	capacity to sue and be sued
4	Section 104(b)	powers
5	Section 104(c)-(d)	no longer duration than series limited liability company; powers and purposes restricted
6	Section 105	Governing Law
7	Section 106	Relation of Operating Agreement, This [Act], And [Limited Liability Company Statute]
8	Section 108	Rules for Applying [Limited Liability Company Statute] to Specified Provisions of [Act]
9	Section 201	Protected Series Designation; Amendment
10	Section 202	Name
11	Section 301	Associated Asset
12	Section 302	Associated Member
13	Section 303(a) or (b)	initial ownership of protected series transferable interest
14	Section 304 (c) or (f)	duties of protected series manager derivative claim provisions



15	Section 401	Limitations on Liability
16	Section 402	Claim Seeking to Disregard Limitation of Liability
17	Section 403	Remedies of Judgment Creditor of Associated Member or Protected Series Transferee
18	Section 404	Enforcement of Judgment Against Non-Associated Asset
19	Section 501(1)  (4) (5)	dissolution of the company dissolves each protected series of the company  judicial dissolution
21	Section 503	Effect of Reinstatement of Series Limited Liability Company or Revocation of Voluntary Dissolution
22	Article 6	Entity Transactions Restricted
23	Article 7	Foreign Protected Series
24	Article 8  Section 803	Miscellaneous Provisions  Transitional Provisions

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**Subsection (a)(4) [Section 104(b)]** – A protected series can have no greater power than the limited liability company statute accords a limited liability company. However, nothing in this act precludes the operating agreement from reducing, restricting, or eliminating particular powers.

**Subsection (a)(7) [Section 106]** – This provision is less restrictive than might appear at first glance, especially with regard to Section 106(d) (extrapolation for subsection (a) matters which the operating agreement does not address). By its terms, subsection (d) invites the

1 operating agreement to provide the applicable rules for filling gaps.

2  
3 EXAMPLE: The members of a manager-managed series limited liability company learn  
4 of this act’s extrapolation approach to subsection (a) matters, do not like the approach,  
5 and amend the agreement to define “disinterested” and to provide:

6  
7 If this agreement does not provide for a matter described in Section [citing the  
8 applicable provision of the state’s LLC statute, as augmented by the act], the  
9 agreement is amended so far as necessary to provide for the matter. The  
10 amendment is stated and adopted by:

- 11 (i) the manager, if disinterested; or  
12 (ii) if the manager is not disinterested, the affirmative vote or consent  
13 of all members owning a majority of the rights to receive  
14 distributions as members at the time the vote or consent is to be  
15 effective.

16  
17 **Subsection (a)(8) [Section 108]** – Section 108 contains the mechanics for extrapolation,  
18 which are non-variable. Section 108 is not self-executing; it applies only when invoked by some  
19 other provision of this act, each of which is also invariable. *See* paragraphs 7,14, and 19-21 of  
20 this subsection. But see also the comment to Subsection (a)(7).

21  
22 **Subsection (a)(9) [Section 201]** – Under the exception, the operating agreement might,  
23 for example, decrease the quantum of member consent required to authorize establishing a  
24 protected series or grant the authority exclusively to the persons managing the limited liability  
25 company.

26  
27 **Subsection (a)(15) [Section 401]** – The operating agreement may reduce the protections  
28 provided by Section 401 but may not increase (i.e., strengthen) them. However, an agreement  
29 between a series limited liability company and a creditor may certainly do so viz a viz that  
30 creditor.

31  
32 EXAMPLE: A bank (“Bank”) makes a loan (“Loan”) to a limited liability company with  
33 the money to be used by the company. The loan agreement states that the three protected  
34 series of the company “are not party to nor guarantor of the Loan and have no obligation  
35 to repay any or all of the Loan” and that the bank will have “no recourse to or claim  
36 against” the protected series “with regard to the Loan regardless of any legal or equitable  
37 claim Bank might otherwise have, except for an act by a protected series that is  
38 independently tortious toward Bank.” Although this agreement can be seen as  
39 reinforcing or strengthening the horizontal shield, Section 401(b) between the company  
40 and the protected series, this provision does not apply. The agreement is not part of the  
41 operating agreement.

42  
43 **Subsection (a)(16)-(18) [Sections 402 - 404]** – If an enacting state’s limited liability  
44 company statute states a restriction similar to Uniform Limited Liability Company Act (2006)  
45 (Last Amended 2013), Section 105(c)(15) (prohibiting an operating agreement from  
46 “restrict[ing] the rights under this [act] of a person other than a member or manager”), these

1 provisions may well be redundant. *See* Section 106(b) of this act (providing that, if an enacting  
2 state’s limited liability company statute “restricts the power of an operating agreement, the  
3 restriction applies to a matter under this [act] according to the rules in Section 108”). However,  
4 not all limited liability company statutes follow the uniform act on this point. For those that do,  
5 these provisions are useful for the avoidance of doubt.

6  
7 **Subsection (a)(19) (Section 501(1), (4), (5))** – The operating agreement may not change  
8 the stated grounds for judicial dissolution but may determine the forum in which a claim for  
9 dissolution under Section 501(4) or (5) is determined. For example, arbitration and forum  
10 selection clauses are commonplace in business relationships in general and operating agreements  
11 in particular.

12  
13 **Subsection (a)(22)** – Although the operating agreement may not vary Article 6, Section  
14 604 incorporates by reference the merger-related provisions of an enacting state’s limited  
15 liability company statute. Some of those provisions are variable, especially, for example, the  
16 quantum of consent necessary to approve a limited liability company’s participation in a merger.

17  
18 **Subsection (a)(25)** – This provision derives from Uniform Limited Liability Company  
19 Act (2006) (Last Amended 2013), Section 105(c)(3) (prohibiting the operating agreement from  
20 varying “any requirement, procedure, or other provision of this [act] pertaining to: (A) registered  
21 agents; or (B) the [Secretary of State], including provisions pertaining to records authorized or  
22 required to be delivered to the [Secretary of State] for filing under this [act]”). However, not all  
23 limited liability company statutes follow the uniform act on this point. For those that do, this  
24 provision is included for the avoidance of doubt.

25  
26 **Subsection (b)** – This provision is derived essentially verbatim from Uniform Limited  
27 Liability Company Act (2006) (Last Amended 2013), Section 105(c)(8).

28  
29 **SECTION 108. RULES FOR APPLYING [LIMITED LIABILITY COMPANY  
30 STATUTE] TO SPECIFIED PROVISIONS OF [ACT].**

31 (a) Subject to subsection (b) and except as otherwise provided in Section 107, the  
32 following rules apply in applying Sections 106, 304(a), 304(e), 501(4)(A), 502(a), and 503(2):

33 (1) A protected series of a series limited liability company is deemed to be a  
34 limited liability company that is formed separately from the company and is distinct from the  
35 company and any other protected series of the company.

36 (2) An associated member of the protected series is deemed to be a member of the  
37 company deemed to exist under paragraph (1).

1 (3) A protected series transferee of the protected series is deemed to be a  
2 transferee of the company deemed to exist under paragraph (1).

3 (4) A protected series transferable interest of the protected series is deemed to be  
4 a transferable interest of the company deemed to exist under paragraph (1).

5 (5) A protected series manager is deemed to be a manager of the company  
6 deemed to exist under paragraph (1).

7 (6) Any asset of the protected series is deemed to be an asset of the company  
8 deemed to exist under paragraph (1), whether or not the asset is an associated asset of the  
9 protected series.

10 (7) Any creditor or other obligee of the protected series is deemed to be a creditor  
11 or obligee of the company deemed to exist under paragraph (1).

12 (b) Subsection (a) does not apply if its application would:

13 (1) contravene [cite provision of this state’s limited liability company statute  
14 limiting the power of an operating agreement]; or

15 (2) authorize or require the [Secretary of State] to:

16 (A) accept for filing a type of record that neither this [act] nor [the limited  
17 liability company statute] authorizes or requires a person to deliver to the [Secretary of State] for  
18 filing; or

19 (B) make or deliver a record that neither this [act] nor [the limited liability  
20 company statute] authorizes or requires the [Secretary of State] to make or deliver.

### 21 **Comment**

22  
23 **Subsection (a)** – This provision provides the mechanics for the extrapolation approach  
24 which is at the core of this act. *See* Prefatory Note, Part 6. In effect, this provision treats each  
25 listed item at the protected series level as if the item were the analogous construct at the limited  
26 liability company level. However, the intrinsic the nature of the item being “deemed up” does

1 not change. As Black’s explains, “deem” means “[t]o treat (something) as if ... it has qualities  
 2 *that it does not have*”) Black's Law Dictionary (10th ed. 2014) (emphasis added).

3  
 4 Extrapolation does not “deem up” a protected series designation and does not encompass  
 5 the operating agreement. A protected series designation has no analog at the limited liability  
 6 company level. A certificate of formation would be the closest, but that certificate does far more  
 7 than is done by a protected series designation. As for the operating agreement, again no analog  
 8 exists. A protected series does not have its own operating agreement.

9  
 10 This provision is not self-executing. It applies only when another provision of this act  
 11 expressly invokes Section 108. Extrapolation, like “proof of negligence” does not float “in the  
 12 air.” *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 341, 162 N.E. 99 (1928) (Cardozo, J.)  
 13 (quoting Pollock, Torts [11th ed.], p. 455).

<b>Provision Invoking Section 108</b>	<b>Function of Invoking Provision</b>
106	delineates the multifaceted relationship among the operating agreement of a series limited liability company, this act, and an enacting state’s limited liability company statute
304(c)	determines the duties of a protected series manager to the protected series and any associated members and protected series transferees of the protected series
304(f)	invokes the derivative claim provisions of an enacting state’s limited liability company statute
501(4)(A)	addresses judicial dissolution of a protected series
502(a)	addresses the winding up of a protected series

15

Section 503(2)	delineates what happens to a protected series of a series limited liability company when the company revokes its voluntary dissolution or is reinstated after being administratively dissolved
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**Subsection (b)(2)** – This provision does not address the question of whether the filing office may, may not, or shall accept for filing a record that includes information beyond the information specified by the statute providing for the filing of the record.

**[ARTICLE] 2**

**ESTABLISHING PROTECTED SERIES**

**SECTION 201. PROTECTED SERIES DESIGNATION; AMENDMENT.**

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish a protected series, a limited liability company shall deliver to the [Secretary of State] for filing a protected series designation, signed by the company, stating the name of the company and the name of the protected series to be established.

(c) A protected series is established when the protected series designation takes effect under [cite to provision of this state’s limited liability company statute determining when a record delivered for filing takes effect].

(d) To amend a protected series designation, a series limited liability company shall deliver to the [Secretary of State] for filing a statement of designation change, signed by the company, that changes the name of the company, the name of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under [cite to provision of this state’s limited liability company statute determining when a record delivered for filing takes effect].

1 **Legislative Note:** Subsections (b) and (d) presuppose that an enacting state’s limited liability  
2 company statute will determine who may sign this record. See, e.g., Uniform Limited Liability  
3 Company Act (2006) (Last Amended 2013), Section 203(a)(1) (stating that in general “a record  
4 signed by a limited liability company must be signed by a person authorized by the company”).  
5 If no such “catch-all” provision exists, either this act or the limited liability company statute  
6 should be revised accordingly.  
7

8 *If an enacting state’s limited liability company statute requires a limited liability*  
9 *company’s certificate of formation (however denominated) to identify a person or persons with*  
10 *governance authority, the same requirement should appear in subsection (b).*  
11

## 12 **Comment**

13

14 This section contemplates to two records pertaining to a protected series which are  
15 delivered to the filing office for filing. In each instance, it is the series limited liability company  
16 that prepares, signs, and delivers the record – not the protected series itself. With regard to a  
17 protected series designation, the rationale is obvious. With regard to a statement of designation  
18 change, the rationale has to do with how filing offices maintain and index filed records.  
19

20 The operating agreement of a series limited liability company cannot vary the effects of  
21 this section, except to change the approval method stated in subsection (a). Section 107(a)(9).  
22

23 **Subsection (b)** – Because a protected series designation is a record created by a limited  
24 liability company, an enacting state’s limited liability company statute determines who has  
25 authority to sign for the company and when the designation becomes effective, etc. See, e.g.,  
26 Uniform Limited Liability Company Act (2006) (Last Amended 2013), Sections 203(a)(1)  
27 (stating that in general “a record signed by a limited liability company must be signed by a  
28 person authorized by the company”); 207 (pertaining to effective date and time).  
29

30 **Subsection (c)** – A protected series may be established without associated members.  
31 *Contrast* Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 201(d)  
32 (“A limited liability company is formed when the certificate of organization becomes effective  
33 and at least one person has become a member.”) Likewise, a protected series may be established  
34 without any assets (whether or not associated).  
35

36 If a protected series is established without associated members, the series limited liability  
37 company:  
38

- 39 • owns all the protected series transferable interests
  - 40 ○ Section 303(b) – applicable only at the moment the protected series is established
  - 41 and subject to subsequent transfers by the company
  - 42 ○ per Section 107(a)(13) – non-variable; and
  - 43
- 44 • is the series manager of the protected series
  - 45 ○ Section 304(b) – applicable throughout the existence of the protected series – i.e.,
  - 46 whenever a protected series has no associated members

- per Section 107(a) – variable (not listed in the subsection)

**Subsection (d)** – This provision uses “statement of designation change” to avoid confusion with statutes that use “statement of change” for a different purpose. *See, e.g.*, Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 116 (Change of Registered Agent or Address for Registered Agent by Limited Liability Company).

The decision to file a statement of designation change will typically be ministerial and well within the ordinary course of the activities and affairs of a series limited liability company. For example, if a company changes its name, the company must change accordingly the name of each protected series of the company. *See* Section 202(b)(1), 202(c) cmt. In contrast, the decision to change the company’s name might be neither ministerial nor in the ordinary course.

For the reasons stated in the comment to subsection (b), an enacting state’s limited liability company statute governs who has authority to sign a statement of designation change on behalf of a series limited liability company.

## **SECTION 202. NAME.**

(a) Except as otherwise provided in subsection (b), the name of a protected series must comply with [cite the provision of this state’s limited liability company statute imposing name requirements on a limited liability company].

(b) The name of a protected series of a series limited liability company must:

(1) begin with the name of the company, including any word or abbreviation required by [cite the provision of this state’s limited liability company statute requiring that the name of a limited liability company include a “designator”] to designate that the company is a limited liability company; and

(2) contain the phrase “Protected Series” or “protected series” or the abbreviation “P.S.” or “PS”.

(c) If a series limited liability company changes its name, the company shall deliver to the [Secretary of State] for filing a statement of designation change for each of the company’s protected series, changing the name of each protected series to comply with this section.



1 **Legislative Note:** [TBA concerning how a filing office’s current computer programs and other  
2 information technology resources will affect how efficiently a person will be able to access filed  
3 information concerning a protected series.]  
4

5 **Comment**  
6

7 **Subsection (b)(1)** – This provision and the filing provisions in Sections 201(b) and (d)  
8 (protected series designation, statement of designation change), 502(b) and (c) (optional  
9 statements of dissolution, optional statement of termination) and 606(2) (required attachments to  
10 statement of merger) combine to provide substantial transparency, allowing a person to search  
11 the public record to determine  
12

- 13 • whether a limited liability company is a series limited liability company;
  - 14 ○ if so, the identity of all protected series of the company; and
- 15 • whether an organization is or has been a protected series and, if so
  - 16 ○ identity of the series limited liability company under whose aegis the protected
  - 17 series exists and any other protected series of that company;
  - 18 ○ whether the protected series was previously a protected series of a series limited
  - 19 liability company that merged out of existence under Section 604 – i.e., whether
  - 20 the protected series relocated during the merger;
  - 21 ○ whether the protected series was established as part of a merger under Section 604
  - 22 in which the series limited liability company was the surviving company; and
  - 23 ○ whether a statement of dissolution or of termination pertaining to the protected is
  - 24 on file.  
25

26 For transparency provisions pertaining to foreign protected series, see Sections 704 and 705.  
27

28 **Subsections (b)(1) and (c)** – Due to these provisions, a series limited liability company  
29 that changes its name must change accordingly the name of each of the company’s protected  
30 series.  
31

32 **SECTION 203. REGISTERED AGENT.**

33 (a) The registered agent in this state for a series limited liability company is the registered  
34 agent in this state for each protected series of the company.

35 (b) Before delivering a protected series designation to the [Secretary of State] for filing, a  
36 limited liability company shall contract with a registered agent for the agent to serve as the  
37 registered agent in this state for both the company and the protected series.

38 (c) A person that signs a protected series designation delivered to the [Secretary of State]  
39 for filing affirms as a fact that the limited liability company on whose behalf the designation is

1 delivered has complied with subsection (b).

2 (d) A person that ceases to be the registered agent for a series limited liability company  
3 ceases to be the registered agent for each protected series of the company.

4 (e) A person that ceases to be the registered agent for a protected series of a series limited  
5 liability company, other than as a result of the termination of the protected series, ceases to be  
6 the registered agent of the company and any other protected series of the company.

7 (f) Except as otherwise agreed by a series limited liability company and its registered  
8 agent, the agent is not obligated to distinguish between a process, notice, demand, or other record  
9 concerning the company and a process, notice, demand, or other record concerning a protected  
10 series of the company.

11 (g) If a protected series of a series limited liability company ceases to have a registered  
12 agent or its registered agent cannot with reasonable diligence be served, the company or foreign  
13 the protected series may be served by serving the company under [cite the provision of this  
14 state's limited liability company statute that provides for alternative service when a company has  
15 no registered agent or the agent cannot be found] by serving the company.

16 **Comment**

17  
18 **Subsection (a)** – When a protected series lacks an agent for service of process: (i)  
19 perform under this subsection the company also lacks an agent; (ii) under most limited liability  
20 company statutes that lack, if uncorrected, will lead to administrative dissolution; and (iii) under  
21 section 501(1), that dissolution causes the protected series to dissolve. For how to serve a  
22 protected series in that situation, see Section 204(b)

23  
24 **Subsection (b)** – This provision refers to a limited liability company rather than a series  
25 limited liability company so as to encompass a limited liability company that is preparing to  
26 establish its first protected series.

27  
28 **Subsection (c)** – This provision is derived from Uniform Limited Liability Company Act  
29 (2006) (Last Amended 2013), Section 203(c): “A person that signs a record as an agent or legal  
30 representative affirms as a fact that the person is authorized to sign the record.”

31

1           **Subsections (d) and (e)** – These provisions follow inevitably from subsection (a) but are  
2 included for the avoidance of doubt.

3  
4           **Subsection (f)** – The series limited liability company rather than the registered agent  
5 must do the sorting unless the company and the agent agree otherwise.

6  
7           **SECTION 204. SERVICE OF PROCESS, NOTICE, DEMAND, OR OTHER**  
8 **RECORD.**

9           (a) A protected series of a series limited liability company may be served with a process,  
10 notice, demand, or other record required or permitted by law by:

11                   (1) serving the company;

12                   (2) serving the registered agent of the protected series; or

13                   (3) other means authorized by law of this state other than [cite this state’s limited  
14 liability company statute].

15           (b) If a protected series of a series limited liability company ceases to have a registered  
16 agent, or its registered agent cannot with reasonable diligence be served, the protected series may  
17 be served by serving the company under [cite the provision of this state’s limited liability  
18 company statute that provides for alternative service when a company has no registered agent or  
19 the agent cannot be found].

20           (c) Service of a summons and complaint on a series limited liability company is notice to  
21 each protected series of the company of service of the summons and complaint and the contents  
22 of the complaint.

23           (d) Service of a summons and complaint on a protected series of a series limited liability  
24 company is notice to the company and any other protected series of the company of service of  
25 the summons and complaint and the contents of the complaint.

26           (e) Service of a summons and complaint on a foreign series limited liability company is

1 notice to each foreign protected series of the foreign company of service of the summons and  
2 complaint and the contents of the complaint.

3 (f) Service of a summons and complaint on a foreign protected series of a foreign series  
4 limited liability company is notice to the foreign company and any other foreign protected series  
5 of the company of service of the summons and complaint and the contents of the complaint.

6 (g) Notice to a person under subsection (c), (d), (e), or (f) is effective whether or not the  
7 summons and complaint identify the person if the summons and complaint name as a party and  
8 identify:

9 (1) the series limited liability company or a protected series of the company; or

10 (2) the foreign series limited liability company or a foreign protected series of the  
11 foreign company.

## 12 **Comment**

13

14 **Subsection (a)** – Under this provision, serving a protected series of a series limited  
15 liability company by serving the company has the same effect as serving the protected series’  
16 registered agent. Except as otherwise provided in subsections (c) through (g), effective service  
17 requires that the protected series being served be adequately identified.

18

19 However effected, service of a record on a protected series does not affect the protected  
20 series if the record is inapposite. For example, serving a summons to a deposition on a series  
21 limited liability company has no effect on a protected series of the company unless the summons  
22 names the protected series as the deponent. Likewise, serving a protected series with a charging  
23 order pertaining to a judgment debtor has no effect if the debtor is neither an associated member  
24 of the protected series nor a protected series transferee.

25

26 **Subsections (c)-(g)** – In a world of complex, multi-tiered, multipart organizations, it is  
27 not always easy to identify which part of such an organization is legally responsible for a  
28 particular claimed harm. This difficulty enhances statute of limitations risk.

29

30 These five subsections encompass series limited liability companies, protected series,  
31 foreign series limited liability companies, and foreign protected series. The intent is to mitigate  
32 the statute of limitations risk by addressing the “relating back” issue in the context of amending a  
33 complaint.

34

35 Both federal and state courts provide criteria for amending a complaint to name a new

1 party and having the amendment relate back to the original complaint. *See, e.g.*, F.R.C.P. 15(c),  
2 Minn.R.Civ.P. 15(h). While “relating back” solves the statute of limitations problem, the  
3 relating back rules require *inter alia* that “the party to be brought in by amendment ... received  
4 such notice of the action that it will not be prejudiced in defending on the merits.” F.R.C.P.  
5 15(c)(1)(C)(i).

6  
7 In some jurisdictions, a plaintiff can also use “Doe” defendants to address the statute of  
8 limitations risk. *See, e.g.*, Miss.R.C.P. 9(h) (“Fictitious Parties. When a party is ignorant of the  
9 name of an opposing party and so alleges in his [sic] pleading, the opposing party may be  
10 designated by any name, and when his [sic] true name is discovered the process and all pleadings  
11 and proceedings in the action may be amended by substituting the true name and giving proper  
12 notice to the opposing party.”).

13  
14 However, using “Doe” defendants raises complex issues. *See* N.Y. C.P.L.R. 1024  
15 (McKinney), Vincent C. Alexander, Practice Commentaries (explaining the complexities, noting  
16 that: (i) “the defendant whose name is unknown must be described in such a way as to fairly  
17 apprise the party that he or she is an intended defendant”; (ii) [a]n inadequate description renders  
18 the action jurisdictionally defective”; and (iii) [e]ach case, of course, is fact-specific as to the  
19 sufficiency of the description of the intended defendant”).

20  
21 Moreover, federal and some state courts disfavor the “Doe” tactic. *See, e.g., Barrow v.*  
22 *Wethersfield Police Dep’t*, 66 F.3d 466, 468 (2d Cir. 1995), modified, 74 F.3d 1366 (2d Cir.  
23 1996) (“We have stated that it is familiar law that ‘John Doe’ pleadings cannot be used to  
24 circumvent statutes of limitations because replacing a ‘John Doe’ with a named party in effect  
25 constitutes a change in the party sued. Thus, such an amendment may only be accomplished  
26 when all of the specifications of Fed.R.Civ.P. 15(c) [relating back rule] are met.”) (quoting  
27 *Aslanidis v. United States Lines, Inc.*, 7 F.3d 1067, 1075 (2d Cir.1993); internal quotation marks  
28 and brackets in original omitted); State ex rel. Holzum, 342 S.W.3d 313, 316 (Mo. 2011)  
29 (holding that naming Doe defendants is immaterial to a motion to relate back an amendment to  
30 the complaint and stating that the applicable rule “allows a change in parties but requires that the  
31 correct party defendant receive ‘notice’ of the original action”).

32  
33 **SECTION 205. CERTIFICATE OF GOOD STANDING FOR PROTECTED**  
34 **SERIES.**

35 (a) On request of any person, the [Secretary of State] shall issue a certificate of good  
36 standing for a protected series of a series limited liability company or a certificate of registration  
37 for a foreign protected series if:

38 (1) in the case of a protected series:

39 (A) no statement of dissolution, termination, or relocation pertaining to the

1 protected series has been filed; and

2 (B) the company has delivered to the [Secretary of State] for filing the  
3 most recent [annual] [biennial] report required by [cite the provision of this state's limited  
4 liability company statute requiring an annual or biennial report] and the report includes the name  
5 of the protected series, unless:

6 (i) when the company delivered the report for filing the protective  
7 series designation pertaining to the protected series had not yet taken effect; or

8 (ii) after the company delivered the report for filing, the company  
9 delivered to the [Secretary of State] for filing a statement of designation change changing the  
10 name of the protected series.

11 (2) in the case of a foreign protected series, it is registered to do business in this  
12 state.

13 (b) A certificate issued under subsection (a) must state:

14 (1) in the case of a protected series:

15 (A) the name of the protected series of the series limited liability company  
16 and the name of the company;

17 (B) that the requirements of subsection (a) are met;

18 (C) the date the protected series designation pertaining to the protected  
19 series took effect; and

20 (D) if a statement of designation change pertaining to the protected series  
21 has been filed, the effective date and contents of the statement;

22 (2) in the case of a foreign protected series, that it is registered to do business in  
23 this state;

1 (3) that the fees, taxes, interest, and penalties owed to this state by the protected  
2 series or foreign protected series and collected through the [Secretary of State] have been paid,  
3 if:

4 (A) payment is reflected in the records of the [Secretary of State]; and

5 (B) nonpayment affects the good standing of the protected series; and

6 (4) other facts reflected in the records of the [Secretary of State] pertaining to the  
7 protected series or foreign protected series which the person requesting the certificate reasonably  
8 requests.

9 (c) Subject to any qualification stated by the [Secretary of State] in a certificate issued  
10 under subsection (a), the certificate may be relied on as conclusive evidence of the facts stated in  
11 the certificate.

12 **Legislative Note:** *This section parallels Uniform Limited Liability Company Act (2006) (Last*  
13 *Amended 2013), Section 211 (Certificate of Good Standing or Registration). An enacting state*  
14 *should revise this section as necessary to parallel the comparable provision in the state's limited*  
15 *liability company statute. In some states, a filing office's current computer programs and other*  
16 *information technology resources may also require revisions to this section.*

### 17 18 **Comment**

19  
20 This section applies only to protected series of a domestic series limited liability  
21 company. Under Section 704, each foreign protected series seeking registration is treated as if  
22 the foreign protected series were a foreign limited liability company. As a result, under Section  
23 704, a foreign protected series may obtain a statement of registration under the appropriate  
24 provision of the limited liability company statute – see, e.g., Uniform Limited Liability Company  
25 Act (2006) (Last Amended 2013), Section 211.

26  
27 **Subsection (a)** – This subsection parallels the provisions of Uniform Limited Liability  
28 Company Act (2006) (Last Amended 2013), Section 211, pertaining to domestic limited liability  
29 companies, with one exception. This provision has no parallel to Uniform Limited Liability  
30 Company Act (2006) (Last Amended 2013), Section 211(b)(2)(D)(ii) – that “the records of the  
31 [Secretary to State] do not otherwise reflect that the [limited liability] company has been  
32 dissolved or terminated.”

33  
34 To make that determination about a protected series, the filing office would have to  
35 determine whether its records disclose the dissolution or termination of the series limited liability

1 company. Requiring that determination for each certificate of good standing for a protected  
2 series would impose unnecessary costs. For example, suppose that a person seeks a certificate of  
3 good standing for 15 protected series of the same series limited liability company. The requestor  
4 needs only one certification that the company is in good standing, not 15. See comment to  
5 subsection (a)(8).  
6

7 **Subsection (a)(8)** – As a matter of prudence, person seeking to determine the good  
8 standing of a protected series of a series limited liability company should also determine whether  
9 the company is in good standing. Depending on the rules, procedures, or practices of the filing  
10 office, a requestor might use this provision to do so, or instead file a contemporaneous, separate  
11 request for a certificate of good standing for the company.  
12

### 13 **SECTION 206. INFORMATION REQUIRED IN [ANNUAL] [BIENNIAL]**

#### 14 **REPORT; EFFECT OF FAILURE TO PROVIDE.**

15 (a) In the [annual][biennial] report required by [cite the provision of this state’s limited  
16 liability company statute pertaining to annual or biennial report] a series limited liability  
17 company shall include the name of each protected series of the company for which the company  
18 has previously delivered to the [Secretary of State] for filing a protected series designation and  
19 which has not dissolved and completed winding up.

20 (b) A failure by a series limited liability company to comply with subsection (a) with  
21 regard to a protected series prevents issuance of a certificate of good standing pertaining to the  
22 protected series but does not otherwise affect the protected series.

#### 23 **Comment**

24  
25 A series limited liability company’s failure to include the name of a protected series does  
26 not dissolve or terminate the protected series or alter the capacity or powers of the protected  
27 series in any way. However, a court might consider a sustained or deliberate omission as a  
28 ground for “piercing” the horizontal shield, the vertical shield, or both. *See* Section 402, cmt.



1 [ARTICLE] 3

2 ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED SERIES  
3 TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

4 SECTION 301. ASSOCIATED ASSET.

5 (a) Only an asset of a protected series may be an associated asset of the protected series.

6 Only an asset of a series limited liability company may be an associated asset of the company.

7 (b) An asset of a protected series of a series limited liability company is an associated asset  
8 of the protected series only if the protected series creates and maintains records that state the name  
9 of the protected series and describe the asset with sufficient specificity to permit a disinterested,  
10 reasonable individual to:

11 (1) identify the asset and distinguish it from any other assets of the protected series,  
12 any assets of the company, and any assets of any other protected series of the company;

13 (2) determine when and from what person the protected series acquired the asset or  
14 how the asset otherwise became an asset of the protected series; and

15 (3) if the protected series acquired the asset from the company or another protected  
16 series of the company, determine any consideration paid, the payor, and the payee.

17 (c) An asset of a series limited liability company is an associated asset of the company only if  
18 the company creates and maintains records that state the name of the company and describe the asset  
19 with sufficient specificity to permit a disinterested, reasonable individual to:

20 (1) identify the asset and distinguish it from any other assets of the company and any  
21 assets of any protected series of the company;

22 (2) determine when and from what person the company acquired the asset or how the  
23 asset otherwise became an asset of the company; and

1 (3) if the company acquired the asset from a protected series of the company,  
2 determine any consideration paid, the payor, and the payee.

3 (d) The records and recordkeeping required by subsections (b) and (c) may be organized by  
4 specific listing, category, type, quantity, computational or allocational formula or procedure,  
5 including a percentage or share of any asset or assets, or in any other reasonable manner.

6 (e) To the extent permitted by this section and law of this state other than this [act], a  
7 series limited liability company or protected series of the company may hold an associated asset  
8 directly or indirectly, through a representative, nominee, or similar arrangement, except that:

9 (1) a protected series may not hold an associated asset in the name of the  
10 company or another protected series of the company; and

11 (2) the company may not hold an associated asset in the name of a protected  
12 series of the company.

### 13 **Comment**

14  
15 As explained in Prefatory Note, Part 7, with regard to horizontal shields this act  
16 distinguishes the non-liability rule, Section 401(b), from the non-recourse rule. The non-  
17 recourse rule protects only associated assets, and this section states the recordkeeping mechanics  
18 required to qualify an asset as an associated asset. Section 404 states the consequences of non-  
19 compliance.

20  
21 **Subsection (a)** – Only property that is an asset of a protected series may be an associated  
22 asset of the protected series. The same rule applies to the series limited liability company itself.  
23 Thus, associated assets are a subset of assets (although, if the recordkeeping is satisfactory, the  
24 subset will be co-extensive with the set).

25  
26 **Subsections (b) and (c)** – These provisions state the recordkeeping required for an asset  
27 to be an associated asset of respectively a protected series or series limited liability company.

28  
29 Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 102(18)  
30 defines “record” as “information that is inscribed on a tangible medium or that is stored in an  
31 electronic or other medium and is retrievable in perceivable form.” The reference here and in  
32 subsection (c) to “a record or set of records” indicates that the necessary information may be  
33 found in one record (e.g., one spreadsheet) or a combination of records comprised so as to enable  
34 “a disinterested, reasonable individual” to make sense of the combination. *Cf.* Uniform Limited

1 Liability Company Act (2006) (Last Amended 2013), Section 102(13), cmt. (stating that “an  
2 operating agreement may comprise several of separate documents (or records), however  
3 denominated”).  
4

5 In this context, a “reasonable individual” has at least a general familiarity with business  
6 records. However, the standard does not require familiarity with generally accepted accounting  
7 principles (GAAP) or any other particular set of accounting rules. It follows that records  
8 decipherable only by a forensic accountant do not meet the standard. By the same token, these  
9 provisions do not require that the recordkeeping comply with GAAP or any other particular set  
10 of accounting rules.  
11

12 Unless the operating agreement provides otherwise, the owner of an asset (a protected  
13 series or the company, as the case may be) is responsible for meeting the recordkeeping  
14 requirements with regard to the asset. However, this decentralized approach can be a trap for the  
15 unwary. Records of a protected series might be clear beyond peradventure if considered alone  
16 but ambiguous when considered along with the records of another protected series or the series  
17 limited liability company. The operating agreement can address this problem by delegating  
18 recordkeeping responsibility for a series limited liability company and all its protected series to  
19 one person – i.e., the company, one of the protected series, or a third party (e.g., a management  
20 company).  
21

22 Access to the records maintained under this section is governed by the same rules that  
23 apply to other information maintained by a series limited liability company or protected series.  
24 *See, e.g.*, Section 305 (right of person not associated member of protected series to information  
25 concerning protected series) and 107(b) (prohibition against unreasonably restricting the rights  
26 stated in Section 305).  
27

28 As to an access request by an outsider – e.g., a third-party creditor searching for non-  
29 associated (“up for grabs”) assets – the question is governed by other law, e.g., civil procedure  
30 rules of discovery, including rules pertaining to post-judgment disclosures.  
31

32 **Subsections (b)(1)-(3); (c)(1)-(3)** – An interesting interplay between this act and the  
33 Uniform Voidable Transactions Act (“UVTA”) could result if a protected series or series limited  
34 liability company fails to meet the transparency requirements stated in these provisions.  
35

36 **EXAMPLE:** Karsai LLC is a series limited liability company with three protected series:  
37 Karsai LLC Protected Series A (“PS-A”), Karsai LLC Protected Series B (“PS-B”),  
38 Karsai LLC Protected Series C (“PS-C”). The following sequence of events occurs:  
39

- 40 1. PS-A transfers an asset to PS-B in a transaction voidable under the UVTA.
- 41 2. PS-B fails to comply with subsection (b)(3); the asset is therefore a non-  
42 associated asset of PS-B.
- 43 3. A judgment creditor of PS-C invokes Section 404, seeking to levy on the non-  
44 associated asset of PS-B. A judgment creditor of PS-A invokes the voidable  
45 transactions act, seeking to recover the asset from PS-B.

46 Which creditor prevails is determined by other law.

1           **Subsections (b)(1)-(2); (c)(1)-(2)** – These provisions impose substantial transparency  
2 requirements. [TBA – examples pertaining the Smith-Kleinberger colloquy on fungible and  
3 quasi-fungible goods.]  
4

5           The reference in subsections (b)(2) and (c)(2) to “how the asset otherwise became an  
6 asset of the protected series/company” encompasses assets that are manufactured or otherwise  
7 created or developed “in house.” Cf. Uniform Commercial Code, Section UCC § 2-501(1)(b)  
8 (pertaining to the identification of future goods).  
9

10           **Subsections (b)(3); (c)(3)** – These provisions impose additional transparency  
11 requirements in transactions between a series limited liability company and one of the protected  
12 series of the company or between two protected series of the company. In almost all instances,  
13 the person acquiring the asset will itself pay the consideration. However, a protected series or  
14 series limited liability company might acquire an asset through a third party beneficiary contract,  
15 including one in which the protected series or company is a donee beneficiary. Similarly,  
16 payment might be made to an assignee of the person transferring the asset.  
17

18           **Subsection (e)** – Under this provision, for example, stock could constitute an associated  
19 asset of a protected series, even though the stock is held in “street name” by a brokerage firm.  
20

21           **Subsection (e)(1)-(2)** – These exceptions promote transparency.  
22

## 23           **SECTION 302. ASSOCIATED MEMBER.**

24           (a) Only a member of a series limited liability company may be an associated member of  
25 a protected series of the company.

26           (b) A member of a series limited liability company becomes an associated member of a  
27 protected series of the company when the operating agreement or a procedure established by the  
28 agreement:

29                   (1) identifies the member as an associated member of the protected series; and

30                   (2) states any protected series transferable interest the associated member has in  
31 connection with becoming or being an associated member.

32           (c) If a person that is an associated member of a protected series of a series limited  
33 liability company is dissociated from the company, the person ceases to be an associated member  
34 of the protected series.

1 **Legislative Note:** Following Uniform Limited Liability Company Act (2006) (Last Amended  
2 2013), Section 401(d), Section 302(b)(2) of this act permits a member to be an associated  
3 member of a protected series without having an economic interest in the protected series. If an  
4 enacting state’s limited liability company statute does not permit “non-economic members,” the  
5 state should: (i) revise Section 302(b)(2) by substituting “the” for “any”; and (ii) determine  
6 whether a person has a sufficient economic interest to be a member of a series limited liability  
7 company solely by reason being an associated member of a protected series of the company  
8 provide accordingly.  
9

10 **Comment**  
11

12 **Subsection (a)** – The requirement stated here is integral to this act; allowing a non-  
13 member to be associated with a protected series would oust the operating agreement from its  
14 fundamental role, or at the very least make that role extraordinarily complex. *See also* Section  
15 102(3) (defining “associated member” as “a member that meets the requirements under Section  
16 302.”) (emphasis added).  
17

18 Under this subsection, any event causing a member’s dissociation from a series limited  
19 liability company *ipso facto* ends the person’s status as an associated member of any protected  
20 series company. The operating agreement can specify other events causing a member to cease  
21 being an associated member of a protected series.  
22

23 This act does not prescribe the fate of the protected series transferable interest of person  
24 who ceases to be an associated member of a protected series. That fate depends, first, on the  
25 operating agreement and, if the operating agreement is silent, then per Sections 106(d)(2) and  
26 108 on the default rule provided by an enacting state’s limited liability company statute. The  
27 typical result is to freeze in the person as a transferee of its own transferable interest. For a  
28 discussion of the lot of a “bare naked assignee” at the limited liability company level, see  
29 Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 107(b), cmt.  
30

31 **Subsection (b)** – Because this provision addresses how a member becomes an associated  
32 member, extrapolation for internal affairs (Sections 106(d) and 108) does not apply. In contrast,  
33 extrapolation will determine the consequences of a member ceasing to be an associated member  
34 of a protected series, unless the operating agreement addresses the matter.  
35

36 **SECTION 303. PROTECTED SERIES TRANSFERABLE INTEREST.**

37 (a) A protected series transferable interest of a protected series of a series limited liability  
38 company must be owned initially by an associated member of the protected series or the  
39 company.  
40

41 (b) If a protected series of a series limited liability company has no associated members  
when established, the company owns the protected series transferable interests in the protected

1 series.

2 (c) In addition to acquiring a protected series transferable series interest under subsection  
3 (b), a series limited liability company may acquire a series transferable interest through a transfer  
4 from another person or as provided in the operating agreement.

5 (d) If a series limited liability company owns a protected series transferable interest of a  
6 protected series of the company, a provision of this [act], except Section 108(a)(3), or the  
7 company's operating agreement which applies to a protected series transferee of the protected  
8 series applies to the company in its capacity as an owner of the protected series transferable  
9 interest.

#### 10 **Comment**

11  
12 **Subsection (a)** – A protected series transferable interest can be owned initially only by an  
13 associated member or the series limited liability company. *Cf.* Uniform Limited Liability  
14 Company Act (2006) (Last Amended 2013), Section 102(24) (defining “[t]ransferable interest”  
15 as “the right, *as initially owned by a person in the person’s capacity as a member*, to receive  
16 distributions from a limited liability company”) (emphasis added). Subsection (a) is not variable,  
17 Section 107(a)(13), but does not restrict an initial owner’s rights to transfer. The operating  
18 agreement should delineate those rights. If it does not, Sections 106(c) and 108 delineate the  
19 rights by extrapolation. *See* Section 106(d), cmt.

20  
21 **Subsection (b)** – This provision is non-variable, Section 107(a)(13).

22  
23 **Subsection (d)** – By definition, this act does not permit a series limited liability company  
24 to be an associated member of any of the protected series of the company. *See* Section 302(a)  
25 (“Only a member of a series limited liability company may be an associated member of a  
26 protected series of the company.”). In consequence, when a company acquires a series  
27 transferable interest it obtains no governance rights in the protected series except as provided in  
28 the operating agreement or under Subsection 304(b) (providing as a default rule that whenever a  
29 protected series has no associated members, the company is the series manager).

30  
31 **Subsection (d)** – When a series limited liability company owns a protected series  
32 transferable interest of a protected series of the company, the company’s rights are identical to  
33 the rights of a protected series transferee of the protected series with only one exception. The  
34 exception is Section 304(b), which makes the company the protected series manager of any  
35 protected series that has no associated members.

36  
37 The Drafting Committee discussed omitting this subsection in favor of expanding the

1 definition of “protected series transferee” to include the company. That approach is consistent  
2 with “[a] protected series of a series limited liability company [being] a person distinct from ...  
3 the company,” Section 103(1), but nonetheless seems counterintuitive (somewhat like a snake  
4 swallowing its own tail). To avoid potential confusion, the Committee chose the approach stated  
5 in this subsection.

6  
7 **SECTION 304. MANAGEMENT.**

8 (a) A protected series may have more than one protected series manager.

9 (b) Whenever a protected series has no associated members, the series limited liability  
10 company is the protected series manager.

11 (c) Any duties of a series manager of a protected series of a series limited liability  
12 company to the protected series, any associated member of the protected series, or any protected  
13 series transferee of the protected series are determined in accordance with Section 108.

14 (d) Solely by reason of being or acting as a protected series manager of a protected series  
15 of a series limited liability company, a person owes no duty to:

16 (1) the company;

17 (2) another protected series of the company; or

18 (3) another person in that person’s capacity as:

19 (A) a member of the company which is not an associated member of the  
20 protected series;

21 (B) a protected series transferee or protected series manager of another  
22 protected series; or

23 (C) a transferee of the company.

24 (e) An associated member of a protected series of a series limited liability company has  
25 the same rights as any other member of the company to vote on or consent to an amendment to  
26 the company’s operating agreement or any other matter being decided by the members, whether

1 or not the amendment or matter affects the interests of the protected series or the associated  
2 member.

3 (f) [Cite the derivative claim provisions of this state’s limited liability company statute]  
4 apply to a protected series in accordance with Section 108.

5 [(g) An associated member of a protected series is an agent for the protected series with  
6 power to bind the protected series to the same extent that a member of a limited liability  
7 company is an agent for the company with power to bind the company under [cite the statutory  
8 apparent authority provision of this state’s limited liability company statute].]

9 **Legislative Note:** *Uniform Limited Liability Company Act (2006), Section 301 eliminated*  
10 *“statutory apparent authority”, and the 2013 amendments took the same approach. For an*  
11 *enacting state whose limited liability company statute retains the concept of statutory apparent*  
12 *authority, Section 304(g) provides an associated member the same statutory apparent authority*  
13 *to bind a protected series that the limited liability company statute provides for a member to bind*  
14 *a limited liability company. A state that enacts Section 304(g) should also include the provision*  
15 *in the list in Section 107(a) (provisions of this act whose effects the operating agreement may not*  
16 *vary).*

### 17 18 **Comment**

19 **Subsection (b)** – Subject to the operating agreement, this provision applies not only  
20 when a protected series is established but also at any other time.

21  
22 EXAMPLE: When established, Protected Series 1 of XYZ, LLC (“PS-1”) has  
23 four associated members. The operating agreement is silent on how PS-1 is to be  
24 managed, and the relevant limited liability company statute provides for member  
25 management as the default rule. Accordingly, PS-1 is member-managed and  
26 remains so as long as PS-1 has any associated members. For various reasons, all  
27 four associated members eventually cease to be associated. Under this  
28 subsection, XYZ, LLC becomes the protected series manager. If later a member  
29 becomes an associated member, Subsection (b) no longer applies.

30  
31 **Subsection (c)** – “Duties” includes all duties, including fiduciary duties. The reference  
32 to “any duties to ... any associated member of the protected series, or any protected series  
33 transferee of the protected series” does not imply that such duties necessarily exist. The use of  
34 “[a]ny” is significant. Moreover, the reference does not override the distinction between direct  
35 and derivative claims. See subsection (f).

36  
37 **Subsection (d)** – The phrase “in that capacity” is crucially important. A person who is



1 series manager of two protected series of a series limited liability company, or a manager of the  
2 company and a series manager of one of the protected series of the company is acting as an agent  
3 for two different principals. Absent an agreement with both principals after full disclosure, the  
4 agent is in a double bind:

5  
6 The mere existence of a dual agency violates the duty of undivided loyalty.  
7 Moreover, the dual agent risks specific conflicts of duty as to a myriad of  
8 individual issues. The fact that these individual conflicts may be irreconcilable  
9 does not justify the agent ignoring one duty or the other. Rather, if any such  
10 specific conflict materializes, the agent is destined to be liable to one principal,  
11 the other, or both.

12  
13 Daniel S. Kleinberger, AGENCY, PARTNERSHIP AND LLCs: EXAMPLES AND  
14 EXPLANATIONS (5th ed.; Wolters Kluwer; 2017) § 4.1.1-C-4 (No Acting for Others with  
15 Conflicting Interests).

16  
17 The following example shows one method of addressing the inevitable conflict when one  
18 person is protected series manager for more than one protected series of a of a series limited  
19 liability company.

20  
21 EXAMPLE: A-Z LLC (“A-Z”) has five protected series – A-Z LLC – Protected Series 1,  
22 A-Z LLC Protected Series 2, etc. Per the operating agreement, A-Z is the series manager  
23 of each of the protected series. To alleviate the “dual agent” problem, the operating  
24 agreement provides:

25  
26 If this agreement, or [the applicable limited liability company statute] requires or  
27 authorizes A-Z to make a decision that has the potential to benefit one protected  
28 series of A-Z to the prejudice of another protected series of A-Z, or to benefit A-Z  
29 to the detriment of a protected series of A-Z, A-Z is not liable for damages under  
30 this agreement or [the limited liability company statute], whether the claim is in  
31 law or equity, if A-Z acts in the matter with due care and makes the decision with:

- 32 (1) the honest belief that the decision serves the best interests of A-Z or  
33 one or more protected series of A-Z; and  
34 (2) the reasonable belief that the decision breaches no right under this  
35 agreement or [the limited liability company statute] (as permissibly varied by this  
36 agreement) of:  
37 (i) A-Z;  
38 (ii) a protected series of A-Z; or  
39 (iii) a member of A-Z, whether in the capacity of a member of A-Z  
40 or an associated member of a protected series of A-Z.

41  
42 **Subsection (f)** – A default rule, this provision precludes any claim to the protected-series  
43 equivalent of “class voting.”

44  
45 **Subsection (f)** – See the Legislative Note to this section. For a discussion of statutory  
46 apparent authority versus common law actual and apparent authority, see Uniform Limited

1 Liability Company Act (2006) (Last Amended 2013), Section 301(a), cmt.

2

3

**SECTION 305. RIGHT OF PERSON NOT ASSOCIATED MEMBER OF**

4

**PROTECTED SERIES TO INFORMATION CONCERNING PROTECTED SERIES.**

5

(a) A member of a series limited liability company which is not an associated member of  
6 a protected series of the company has a right to information concerning the protected series to the  
7 same extent, in the same manner, and under the same conditions that a member that is not a  
8 manager of a manager-managed limited liability company has a right to information concerning  
9 the company under [cite provisions of the limited liability company statute which provide  
10 information rights for non-manager members of a manager-managed limited liability company].

11

(b) A person formerly an associated member of a protected series has a right to  
12 information concerning the protected series to the same extent, in the same manner, and under  
13 the same conditions that a person dissociated as a member of a manager-managed limited  
14 liability company has a right to information concerning the company under [cite provisions of  
15 the limited liability company statute which provide information rights for dissociated members  
16 of a manager-managed limited liability company].

17

(c) If an associated member of a protected series dies, the legal representative of the  
18 deceased associated member has a right to information concerning the protected series to the  
19 same extent, in the same manner, and under the same conditions that the legal representative of a  
20 deceased member of a limited liability company has a right to information concerning the  
21 company under [cite provisions of the limited liability company statute providing information  
22 rights in these circumstances].

23

(d) A protected series manager of a protected series has a right to information concerning  
24 the protected series to the same extent, in the same manner, and under the same conditions that a

1 manager of a manager-managed limited liability company has a right to information concerning  
2 the company under [cite provisions of the limited liability company statute which provide  
3 information rights for dissociated members of a manager-managed limited liability company].

4 **Comment**

5 The right of an associated member of a protected series to information from or pertaining  
6 to the protected series depends in the first instance on the operating agreement. To the extent the  
7 agreement does not address the matter, Sections 106(d) and 108 (extrapolation for internal  
8 affairs) apply.  
9

10 Whether a series limited liability company has any right to information concerning a  
11 protected series of the company depends entirely on the operating agreement. If the operating  
12 agreement is silent, under Sections 106(d) and 108, the company and the protected series are  
13 treated as if they were both limited liability companies, distinct from each other. No limited  
14 liability company statute provides any rule giving one such company access to the information of  
15 the other.

16 **[ARTICLE] 4**

17 **LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS**

18 **SECTION 401. LIMITATIONS ON LIABILITY.**

19 (a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a  
20 debt, obligation, or other liability of:

21 (1) a protected series of a series limited liability company solely by reason of  
22 being or acting as:

23 (A) an associated member, series manager, or protected series transferee  
24 of the protected series;

25 (B) a member, manager, or a transferee of the company; or

26 (2) a series limited liability company solely by reason of being or acting as an  
27 associated member, protected series manager, or protected series transferee of a protected series  
28 of the company.

29 (b) Subject to Section 404:

1 (1) a debt, obligation, or other liability of a series limited liability company is  
2 solely the debt, obligation, or liability of the company;

3 (2) a debt, obligation, or other liability of a protected series is solely the debt,  
4 obligation, or liability of the protected series;

5 (3) a series limited liability company is not liable, directly or indirectly, by way of  
6 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the  
7 company solely by reason of the protected series being a protected series of the company or the  
8 company:

9 (A) being or acting as a protected series manager of the protected series;

10 (B) having the protected series manage the company; or

11 (C) owning a protected series transferable interest of the protected series;

12 and

13 (4) a protected series of a series limited liability company is not liable, directly or  
14 indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the  
15 company or another protected series of the company solely by reason of:

16 (A) being a protected series of the company;

17 (B) being or acting as a manager of the company or a protected series  
18 manager of another protected series of the company; or

19 (C) having the company or another protected series of the company be or  
20 act as a protected series manager of the protected series.

21 **Comment**

22 This section provides two different types of liability shields:

- 23
- 24 • the traditional, vertical shields that protect equity holders and managers from status-  
25 based liability for an organization's obligations – i.e., where liability is asserted solely

1 by reason of the status of owner or manager, Subsection (a); and

- 2
- 3 • the novel, horizontal shields that protect a protected series of a series limited liability
- 4 company from liability for the debts, obligations, or other liabilities of the company
- 5 or another protected series of the company (and provide comparable protection for the
- 6 company itself), Subsection (b).
- 7

8 For further explanation, see Prefatory Note, Part 7.

9

10 The shields created by this section are applied as stated in Section 402.

11

12 **Subsection (a)(1)** – This provision establishes the traditional, vertical liability shield to

13 protect associated members, series managers, and protected transferees of a protected series of a

14 of a series limited liability company against status-based liability for a debt, obligation, or other

15 liability of the protected series or of the company and is based on Uniform Limited Liability

16 Company Act (2006) (Last Amended 2013), Section 304(a). The shield is effective only against

17 status-based liability – i.e., where the liability is asserted *solely by reason* of a person’s status

18 (e.g., associated member, series manager). The shield does not protect against direct liability for

19 tortious conduct. For a detailed discussion of this issue, see Uniform Limited Liability Company

20 Act (2006) (Last Amended 2013), Section 304(a), cmt., *Shield Inapposite for Claims Arising*

21 *from a Member’s or Manager’s Own Conduct*.

22

23 The protection accorded a protected series transferee also extends to the series limited

24 liability company. See Section 303(d) (providing that, (“[i]f a series limited liability company

25 owns a protected series transferable interest of a protected series of the company, a provision of

26 this [act]... which applies to a protected series transferee of the protected series applies to the

27 company in its capacity as an owner of the protected series transferable interest”).

28

29 **Subsection (a)(2)** – This provision is shorter than Subsection (a)(1) because an enacting

30 state’s limited liability company statute addresses most of the roles protected by a company’s

31 vertical shield – e.g., a member not in the capacity of an associated member of a protected series.

32

33 **Subsection (b)** – This provision establishes the novel, horizontal shields, which are

34 explained in detail in Prefatory Note, Part 7. The provision is subject to Section 404 because that

35 Section 404 because that “asset by asset” exposure under that section interferes with the non-

36 recourse aspect of the horizontal shields.

37

38 **SECTION 402. CLAIM SEEKING TO DISREGARD LIMITATION OF**

39 **LIABILITY.**

40 (a) Except as otherwise provided in subsection (b), a claim seeking to disregard a

41 limitation in Section 401 is governed by the principles of law and equity, including a principle

42 providing rights to creditors or holding a person liable for a debt, obligation, or other liability of

1 another person, which would apply if each protected series of the series limited liability company  
2 were a limited liability company that is formed separately from the company and distinct from  
3 the company and any other protected series of the company.

4 (b) The failure of a limited liability company or a protected series to observe formalities  
5 relating to the exercise of its powers or management of its activities and affairs is not a ground to  
6 disregard a limitation in Section 401(a) but may be a ground to disregard a limitation in Section  
7 401(b).

8 (c) This section applies to a foreign protected series or foreign series limited liability  
9 company in accordance with Section 703.

10 **Legislative Note:** *Subsection (b) parallels Uniform Limited Liability Company Act (2006) (Last*  
11 *Amended 2013), Section 304(b) but solely with regard to vertical shields. If an enacting state’s*  
12 *limited liability company statute contains a comparable concept but uses different language, the*  
13 *state should revise subsection (b) accordingly. If an enacting state’s limited liability company*  
14 *statute does not contain a comparable concept, the state should omit subsection (b). See also the*  
15 *Legislative Note to Section 703.*

## 16 17 **Comment**

18  
19 **Subsection (a)** – This provision avoids a court having to re-invent the wheel when  
20 considering piercing, affiliate liability, and related theories in the context of a series limited  
21 liability company and its protected series. The provision encompasses outside reverse piercing  
22 claims (to the extent a state allows such claims) but by its terms does not address inside reverse  
23 piercing claims. A successful inside reverse pierce does not disregard a liability shield but rather  
24 permits an entity’s owner to enjoy and exercise a right belonging to the entity or vice versa.  
25

26 The provision’s references to particular categories of “principles of law and equity”  
27 should not be interpreted as limiting the effect of Uniform Limited Liability Company Act  
28 (2006) (Last Amended 2013), Section 111 (stating that “[u]nless displaced by particular  
29 provisions of this [act], the principles of law and equity supplement this [act]”) (brackets in  
30 original) or of comparable provisions in other limited liability company statutes. This provision  
31 refers to a subset of those principals but only to determine how to apply the subset’s principles in  
32 a novel context.  
33

34 **Subsection (b)** – Piercing is based on a factor test. In the corporate context, two of the  
35 most prominent factors are the disregard of governance formalities and disregard of economic  
36 separateness between the entity and owners. However, “[i]n the realm of LLCs, [the  
37 governance] factor is inappropriate, because informality of organization and operation is both

1 common and desired.” Uniform Limited Liability Company Act (2006) (Last Amended 2013),  
2 Section 304(b), cmt. Some limited liability company statutes expressly negate governance  
3 informality as a piercing factor entirely, and some courts have discarded or downgraded the  
4 factor for LLC piercing claims. *See, e.g.*, Uniform Limited Liability Company Act (2006) (Last  
5 Amended 2013), Section § 304(b) (“The failure of a limited liability company to observe  
6 formalities relating to the exercise of its powers or management of its activities and affairs is not  
7 a ground for imposing liability on a member or manager for a debt, obligation, or other liability  
8 of the company.”).

9  
10 Consistent with both the 2006 and 2013 versions of the uniform act, this provision  
11 applies the same approach to the vertical shields provided by this act. The provision does not,  
12 however, apply to the horizontal shields. To do so would undercut the inducement to good  
13 recordkeeping provided by Sections 301 and 404.

14  
15 **SECTION 403. REMEDIES OF JUDGMENT CREDITOR OF ASSOCIATED**  
16 **MEMBER OR PROTECTED SERIES TRANSFEREE.** [Cite provisions of this state’s  
17 limited liability company statute providing or restricting remedies available to a judgment  
18 creditor of a member of a limited liability company or transferee] applies to a judgment creditor  
19 of:

- 20 (1) an associated member or protected series transferee of a protected series; or  
21 (2) a series limited liability company, to the extent the company owns a protected series  
22 transferable interest of a protected series.

23 **Comment**

24 This section applies to the protected series level charging order provisions found in every  
25 limited liability company statute.

26  
27 **SECTION 404. ENFORCEMENT OF JUDGMENT AGAINST NON-**  
28 **ASSOCIATED ASSET.**

29 (a) In this section:

- 30 (1) "Enforcement date" means 12:01 AM on the date on which a claimant first  
31 serves process on a series limited liability company or protected series seeking to enforce under  
32 this section a claim against an asset of the company or protected series by attachment, levy, or

1 the like.

2 (2) “Incurrence date” means the date on which a series limited liability company  
3 or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce  
4 under this section.

5 (b) If a claim against a series limited liability company or a protected series of the  
6 company has been reduced to judgment, in addition to any other remedy provided by law or  
7 equity, the judgment may be enforced in accordance with the following rules:

8 (1) A judgment against the company may be enforced against an asset of a  
9 protected series of the company if the asset:

10 (A) was a non-associated asset of the protected series on the incurrence  
11 date; or

12 (B) is a non-associated asset of the protected series on the enforcement  
13 date.

14 (2) A judgment against a protected series may be enforced against an asset of the  
15 company if the asset:

16 (A) was a non-associated asset of the company on the incurrence date; or

17 (B) is a non-associated asset of the company on the enforcement date.

18 (3) A judgment against a protected series may be enforced against an asset of  
19 another protected series of the company if the asset:

20 (A) was a non-associated asset of the other protected series on the  
21 incurrence date; or

22 (B) is a non-associated asset of the other protected series on the  
23 enforcement date.



1 (c) In addition to any other remedy provided by law or equity, if a claim against a series  
2 limited liability company or a protected series has not been reduced to a judgment and law other  
3 than this [act] permits a prejudgment remedy by attachment, levy, or the like, a court may apply  
4 subsection (b) as a prejudgment remedy.

5 (d) In a proceeding under this section, the party asserting that an asset is or was an  
6 associated asset of a series limited liability company or a protected series of the company has the  
7 burden of proof on the issue.

8 (e) Except as otherwise provided in subsection (c), a proceeding under this section is to  
9 enforce a judgment.

10 (f) This section applies to a foreign protected series or foreign series limited liability  
11 company in accordance with Section 703.

## 12 **Comment**

13  
14 This section pertains to the non-recourse rule explained in Prefatory Note, Part 7-B, and  
15 creates an important, novel inducement in support of the recordkeeping requirements of Section  
16 301. Under this section, a creditor may enforce a judgment against one protected series of a  
17 series limited liability company by pursuing non-associated assets owned by the company or  
18 another protected series of the company. Comparable recourse exists for creditors of the  
19 company.

20  
21 Put another way: an asset of a protected series of a series limited liability company is “up  
22 for grabs” not only to creditors of the protected series but also to creditors of the company and  
23 creditors of any other protected series of the company if the asset is non-associated at either of  
24 two testing moments. Chronologically, the first testing moment is the “incurrence date” – when  
25 the underlying liability was incurred; second testing moment is the “enforcement date” – when a  
26 creditor first seeks enforcement under this section. “Up for grabs” exposure exists likewise for  
27 an asset of a series limited liability company that is non-associated at either of the testing  
28 moments.

29  
30 Section 404 exposure is “asset by asset” and does not otherwise implicate the internal,  
31 horizontal shields created by Section 401(b). However, this section will be largely moot to the  
32 extent a piercing claim succeeds against an internal shield. For example, suppose that, as a result  
33 of a piercing claim, a series limited liability company is held liable for a judgment against a  
34 protected series of the company. Whether an asset of the company is an associated asset of the  
35 company is, at least in the first instance, immaterial to the judgment creditor. The judgment

1 creditor will be enforcing a judgment against the company itself; all the company’s assets are  
2 subject to enforcement regardless of whether associated with the company.

3 In fact, the judgment creditor would *prefer* for each asset of the company to be an  
4 associated asset. If so, the asset is not “up for grabs” – i.e., the asset is available only to creditors  
5 of the company, including (given the successful piercing claim) the judgment creditor.

6  
7 Other law determines what, if any, claims a protected series or the company has, and  
8 against whom, if the protected series or the company loses an asset under this section due to  
9 inadequate recordkeeping. *See* Prefatory Note, Part 7-C (Non-Liability and Non-Recourse  
10 Rules), note 19.

11  
12 **Subsection (a)(1)** – An “enforcement date” begins at 12:01 AM to preclude a protected  
13 series or series limited liability company hurriedly rehabilitating its records after being served.  
14 The phrase “attachment, levy or the like” comes from the definition of “lien creditor” in UCC §  
15 9-102(a)(52).

16  
17 **Subsection (b)** – This subsection applies “asset by asset” and involves analysis at two  
18 points in time: when enforcement against the asset is first sought under this section  
19 (“enforcement date”) and when the liability giving rise to the claim was incurred (“incurrence  
20 date”).

21  
22 When liability incurred (incurrence date):

- 23
- |    |                         |                                   |
|----|-------------------------|-----------------------------------|
| 24 | • if asset owned but    | asset available to                |
| 25 | not associated          | Section 404 claimant              |
| 26 |                         |                                   |
| 27 | • if asset not owned or | availability depends on situation |
| 28 | owned and associated    | “when enforcement first sought”   |
| 29 |                         | (i.e., enforcement date)          |

30  
31 When enforcement under this section first sought (enforcement date):

- 32
- |    |                           |   |
|----|---------------------------|---|
| 33 | • if non-associated asset | asset available to Section 404 claimant       |
| 34 |                           |   |
| 35 | • if associated asset     | availability to claimant depends on situation |
| 36 |                           | when liability incurred (incurrence date)     |

37  
38 The concept of “liability incurred” has been part of uniform law since 1914. *See* UPA  
39 (1997) (Last Amended 2013) § 306(b), cmt. This act does not determine when a liability is  
40 incurred.

41  
42 This provision’s lead-in reference to particular categories of “principles of law or equity”  
43 should not be interpreted as limiting the effect of Uniform Limited Liability Company Act  
44 (2006) (Last Amended 2013), Section 111 (stating that “[u]nless displaced by particular  
45 provisions of this [act], the principles of law and equity supplement this [act]”) (brackets in  
46 original) or of comparable provisions in other limited liability company statutes.

1           **Subsection (c)** – This section does not affect the extent to which pre-judgment  
2 attachment is available. Other law governs that determination.  
3

4           **Subsection (d)** – Various persons might assert that an asset is an associated asset,  
5 including the owner of the asset, a creditor of the owner of the asset, or the trustee in bankruptcy  
6 of the owner of the asset.  
7

8           **Subsection (e)** – This subsection provides a means to enforce an existing judgment, and  
9 is not a separate action to establish or re-litigate the underlying liability which resulted in that  
10 judgment. See, e.g., *David C. Olson, Inc. v. Denver & Rio Grande W. R. Co.*, 789 P.2d 492, 494-  
11 95 (Colo. App. 1990) (“The liability arising from a judgment is a new one, distinct from the  
12 liability upon which the judgment is based, and any prior liability merges into that judgment.”).  
13 Therefore, a claim under this section is timely so long as the judgment is viable.  
14

15   **[ARTICLE] 5**

16   **DISSOLUTION AND WINDING UP OF PROTECTED SERIES**

17   **SECTION 501. EVENTS CAUSING DISSOLUTION OF PROTECTED SERIES.**

18           A protected series of a series limited liability company is dissolved, and its activities and affairs  
19 must be wound up, only on the:

20                         (1) dissolution of the company;

21                         (2) occurrence of an event or circumstance the operating agreement states causes  
22 dissolution of the protected series;

23                         (3) affirmative vote or consent of all members; or

24                         (4) entry by the [appropriate court] of an order dissolving the protected series on  
25 application by an associated member or protected series manager of the protected series:

26                                 (A) in accordance with Section 108; and

27                                 (B) to the same extent, in the same manner, and on the same grounds the court  
28 would enter an order dissolving a limited liability company on application by a member or

29 manager of the company; or

30                         (5) Entry by the [appropriate court] of an order dissolving the protected series on

1 application by the company or a member of the company on the ground that the conduct of all or  
2 substantially all the activities and affairs of the protected series is illegal.

### 3 **Comment**

4  
5 This section states five grounds for dissolving a protected series, which group into three  
6 categories:

- 7
- 8 • a non-variable provision consistent with the nature of a protected series [Paragraph  
9 (1)];
- 10 • two facilitative provisions, consistent with the contractual nature of a limited liability  
11 company [(Paragraphs (2) and (3)]; and
- 12 • two non-variable provisions providing for dissolution by order of court [Paragraphs  
13 (4) and (5).  
14

15 Because this act permits a protected series to be established and function without  
16 associated members, this section does not provide for dissolution when a protected series has no  
17 associated members. The operating agreement can add such a provision, if desired, as well as  
18 sundry other grounds for dissolution.  
19

20 **Paragraph (1)** – This non-variable provision has no analogy at the series limited liability  
21 company level, comports with Section 104(c) (stating that a protected series of a series limited  
22 liability company may not continue when the company has completed winding up). The  
23 provision applies regardless of the cause of the company’s dissolution, including administrative  
24 dissolution.  
25

26 **Paragraphs (2) and (3)** – Section 107(a) does not list these provisions as non-variable,  
27 but any variation would be nonsensical – e.g., an operating agreement provision: (i) stating a  
28 cause of dissolution while providing that the stated cause does not cause dissolution; or (ii)  
29 providing that unanimous consent of the members does not cause dissolution, although  
30 unanimous consent suffices to delete the provision.  
31

32 **Paragraph (3)** – This provision refers to “the affirmative vote or consent of all the  
33 members” (emphasis added) – i.e., not solely the associated members (if any) of the protected  
34 series. Except as provided in the operating agreement, associated members of a protected series  
35 have no special right to cause (or prevent) dissolution of the protected series. *See* Section 304(e).  
36

37 **Paragraph (4)** – This provision analogizes the grounds for court-ordered dissolution of a  
38 protected series to the grounds for court-ordered dissolution of a limited liability company. If an  
39 enacting state’s limited liability company statute makes those grounds non-waivable, Section  
40 107(b) extrapolates that limitation to the protected series level.  
41

42 **Paragraph (5)** – When a protected series acts illegally, any member of a series limited  
43 liability company has reason to worry. Accordingly, a member has standing under this provision  
44 regardless of whether an associated member of the protected series.

1           **SECTION 502. WINDING UP DISSOLVED PROTECTED SERIES.**

2           (a) Subject to subsections (b) and (c) and in accordance with Section 108:

3                   (1) a dissolved protected series shall wind up its activities and affairs in the same  
4 manner that a limited liability company winds up its activities and affairs under [cite the winding  
5 up provisions of this state’s limited liability company statute], subject to the same requirements  
6 and conditions and with the same effects; and

7                   (2) judicial supervision or another judicial remedy is available in the winding up  
8 of the protected series to the same extent, in the same manner, under the same conditions, and  
9 with the same effects that apply under [cite the judicial supervision provision of this state’s  
10 limited liability company statute].

11           (b) When a protected series of a series limited liability company dissolves, the company  
12 may deliver to the [Secretary of State] for filing a statement of protected series dissolution  
13 stating the name of the company and of the protected series and that the protected series is  
14 dissolved. The filing of the statement by the [Secretary of State] has the same effect as the filing  
15 by the [Secretary of State] of a statement of dissolution under [cite the provisions of this state’s  
16 limited liability company statute stating the constructive notice effect of the filing of a statement  
17 of dissolution pertaining to a limited liability company].

18           (c) When a protected series of a series limited liability company has completed winding  
19 up, the company may deliver to the [Secretary of State] for filing a statement of designation  
20 cancellation stating the name of the company and of the protected series and that the protected  
21 series is terminated. The filing of the statement by the [Secretary of State] has the same effect as  
22 the filing by the [secretary of state] of a statement of termination under [cite the provisions of  
23 this state’s limited liability company statute stating the constructive notice effect of the filing of a

1 statement of termination pertaining to a limited liability company].

2 (d) A series limited liability company has not completed its winding up until each of the  
3 protected series of the company has completed its winding up.

4 **Legislative Note:** *If the limited liability company statute of this state does not provide for*  
5 *constructive notice for a statement of dissolution or termination filed regarding a limited liability*  
6 *company, the state should revise subsections (b) and (c) accordingly. Revision is also necessary*  
7 *(albeit in the form of deleting one or both subsections) if the statute provides for only one of the*  
8 *statements or provides for neither.*

9

10 **Comment**

11

12 **Subsection (d)** – This subsection overlaps the winding up provisions of an enacting  
13 state’s limited liability company statute pertaining to the winding up of a limited liability  
14 company, but only to the extent of treating the winding up of protected series as part of the  
15 winding up of a series limited liability company.

16

17 **SECTION 503. EFFECT OF REINSTATEMENT OF SERIES LIMITED**

18 **LIABILITY COMPANY OR REVOCATION OF VOLUNTARY DISSOLUTION.** If a

19 series limited liability company that has been administratively dissolved is reinstated, or a

20 company that voluntarily dissolved rescinds its dissolution:

21 (1) each protected series of the company ceases winding up; and

22 (2) [Cite the provisions of this state’s limited liability company statute stating the results

23 of the reinstatement or rescission] apply to each protected series of the company in accordance

24 with Section 108.

25

25 **Comment**

26

27 Dissolution of a series limited liability company immediately dissolves every protected  
28 series of the company. Under the Uniform Limited Liability Company Act (2006) (Last  
29 Amended 2013), two types of LLC dissolution can be undone – rescission of a voluntary  
30 dissolution, Section 703, and reinstatement after an administrative dissolution. Section 709. In  
31 both instances, the uniform act provides certain retroactive effects.

32

33 This section provides comparable retroactive effect at the protected series level and is  
34 derived from Uniform Limited Liability Company Act (2006) (Last Amended 2013), Sections  
35 703(c) (retroactive effects of rescinding voluntary dissolution) and 709(d) (retroactive effects of

1 reinstatement after administrative dissolution).

2  
3 **[ARTICLE] 6**

4 **ENTITY TRANSACTIONS RESTRICTED**

5 **SECTION 601. DEFINITIONS.** In this [article]:

6 (1) “After a merger” or “after the merger” means when a merger under Section 604  
7 becomes effective and afterwards.

8 (2) “Before a merger” or “before the merger” means before a merger under Section 604  
9 becomes effective.

10 (3) “Continuing protected series” means a protected series of a surviving company which  
11 continues in uninterrupted existence after a merger under Section 604.

12 (4) “Merging company” means a limited liability company that is party to a merger under  
13 Section 604.

14 (5) “Non-surviving company” means a merging company that does not continue in  
15 existence after a merger under Section 604.

16 (6) “Relocated protected series” means a protected series of a non-surviving company  
17 which, after a merger under Section 604, continues in uninterrupted existence as a protected  
18 series of the surviving company.

19 (7) “Surviving company” means a merging company that continues in existence after a  
20 merger under Section 604.

21 ***Legislative Note:*** In addition to the definitions in this section, Article 6 also depends on the  
22 several definitions in Uniform Limited Liability Company Act (2006) (Last Amended 2013),  
23 Section 1001. See the Legislative Note to Section 102.

24  
25 **Comment**

26  
27 **Paragraphs (3) and (6)** – These provisions provide two new and related terms to  
28 describe novel concepts.

1 Paragraph (7) – This provision is derived from Uniform Limited Liability Company Act  
2 (2006) (Last Amended 2013), Section 1001(37).  
3

4 SECTION 602. PROTECTED SERIES MAY NOT BE PARTY TO ENTITY

5 TRANSACTION. A protected series may not:

6 (1) be an acquiring, acquired, converting, converted, merging, or surviving entity;

7 (2) participate in a domestication; or

8 (3) be a party to or be formed, organized, established, or created in a transaction

9 substantially like a merger, interest exchange, conversion, or domestication.

10 *Legislative Note:* If the limited liability company statute of an enacting state provides for  
11 divisions, see, e.g. 15 PA C.S. §§361-368, paragraphs (1) and (3) should be revised accordingly.  
12

13 Comment

14  
15 The protected series is still novel, and this act is the first to comprehensively address the  
16 multitude of issues raised by the construct. Juxtaposing protected series with entity transactions  
17 raises a plethora of additional issues. For example, during the Drafting Committee’s discussions  
18 of this subject, a commissioner created a set of Power Point slides diagramming 11 possible  
19 merger transactions involving protected series. Adding conversions, domestications, and interest  
20 exchanges would have added countless more permutations.  
21

22 The Drafting Committee decided to move slowly in this area and to provide a very  
23 narrow channel for entity transactions involving protected series. As its first step in creating the  
24 narrow channel, the Committee rejected allowing a protected series itself to be a party to any  
25 entity transaction.  
26

27 Paragraphs (1) and (2) – Uniform Limited Liability Company Act (2006) (Last  
28 Amended 2013), Section 1001 defines the terms listed in Paragraph (1) but with regard to  
29 domestications refers to a domesticating or domesticated limited liability company. Hence the  
30 need for Paragraph (2).  
31

32 SECTION 603. RESTRICTIONS ON ENTITY TRANSACTION INVOLVING

33 PROTECTED SERIES. A series limited liability company may not be:

34 (1) an acquiring, acquired, converting, converted, domesticating, or domesticated entity;

35 or

36 (2) except as otherwise provided in Section 604, a party to or the surviving company of a



1 merger.

2 **Comment**

3  
4 In service of the “narrow channel” discussed in the comment to Section 602, this section  
5 precludes a participation of a series limited liability company in an entity transaction except as is  
6 strictly delineated in Section 604. However, this provision does not preclude a series limited  
7 liability company: (i) being involved in a triangular merger as the non-party; and (ii) as the non-  
8 party, providing consideration in the form of interests in one of the protected series of the  
9 company. (If the consideration involves making a person an associated member of the protected  
10 series, the person must be or as a result of the merger become a member of the series limited  
11 liability company. Section 302(a).)

12  
13 **SECTION 604. MERGER AUTHORIZED; PARTIES RESTRICTED.** A series  
14 limited liability company may be party to a merger in accordance with [cite the provisions of this  
15 state’s limited liability company statute pertaining to merger], this section, and Sections 605  
16 through 608 only if:

- 17 (1) each other party to the merger is a limited liability company; and  
18 (2) the surviving company is not created in the merger.

19 *Legislative Note:* Section 604(1) refers to a “limited liability company,” which Uniform Limited  
20 Liability Company Act (2006) (Last Amended 2013), Section 102(8) defines to be a domestic  
21 company. If an enacting state’s limited liability company act defines the term to include both  
22 domestic and foreign companies, Section 604 should be revised to refer to domestic limited  
23 liability companies.

24  
25 **Comment**

26  
27 The mechanics for implementing a permitted merger come mostly from the merger  
28 provisions of an enacting state’s limited liability company statute. See, for example, Uniform  
29 Limited Liability Company Act (2006) (Last Amended 2013), Sections 1021(a)(1) (providing  
30 that “one or more domestic limited liability companies may merge with one or more domestic or  
31 foreign entities into a domestic or foreign surviving entity”) and 1001(11)(a)(x) (defining  
32 “entity” to include “any ... person that has... a legal existence separate from any interest holder  
33 of that person; or ... the power to acquire an interest in real property in its own name”).

34  
35 Unless a merger under this provision is intended to terminate all protected series of each  
36 merging company, the surviving limited liability company will be a series limited liability  
37 company. For that result to obtain, at least one of the merging companies must be a series  
38 limited liability company, because the surviving company may not be created in the merger. See  
39 Paragraph (2).

1 The following chart shows what may happen to a protected series of a series limited  
 2 liability company that is party to a merger under this provision.  
 3

post-merger status of merging company	fate of existing protected series	possible to create protected series as part of the merger?
non-surviving	relocated protected series or dissolved, wound up, and terminated Section 605 (2)(A)	no
surviving	continuing protected series or dissolved, wound up, and terminated Section 605(2)(B)	yes Section 605(2)(D)

4  
 5 **Paragraph (1)** – Coupled with Section 603(1), this provision prevents a foreign series  
 6 limited liability company from becoming a domestic series limited liability company. Allowing  
 7 such a change would create significant problems relating to Sections 608 and 404.  
 8

9 **Subsection (2)** – A limited liability company created in a merger could not deliver to the  
 10 filing office the records required by Section 606(2).  
 11

12 **SECTION 605. PLAN OF MERGER.** In a merger under Section 604, the plan of  
 13 merger must:

14 (1) comply with [cite the provisions of this state’s limited liability company statute  
 15 pertaining to the contents of a plan of merger]; and

16 (2) state:

17 (A) for any protected series of a non-surviving company, whether after the merger  
 18 the protected series will be a relocated protected series or be dissolved, wound up, and  
 19 terminated;

20 (B) for any protected series of the surviving company which exists before the

1 merger, whether after the merger the protected series will be a continuing protected series or be  
2 dissolved, wound up, and terminated;

3 (C) for each relocated protected series or continuing protected series:

4 (i) the name of any person that becomes an associated member or  
5 protected series transferee of the protected series after the merger, any consideration to be paid  
6 by, on behalf of, or in respect of the person, the name of the payor, and the name of the payee;

7 (ii) the name of any person whose rights or obligations in the person's  
8 capacity as an associated member or protected series transferee will change after the merger;

9 (iii) any consideration to be paid to a person who before the merger was an  
10 associated member or protected series transferee of the protected series and the name of the  
11 payor; and

12 (iv) if after the merger the protected series will be a relocated protected  
13 series, its new name;

14 (D) for any protected series to be established by the surviving company as a result  
15 of the merger:

16 (i) the name of the protected series;

17 (ii) any transferable interest to be owned by the surviving company when  
18 the protected series is established; and

19 (iii) the name and transferable interest owned by any person that will be an  
20 associated member of the protected series when the protected series is established; and

21 (E) for any person that is an associated member of a relocated protected series and  
22 will remain a member after the merger, any amendments to the operating agreement of the  
23 surviving company which are or are proposed to be in a record and are necessary or appropriate

1 to state the rights and obligations of the person as a member of the surviving company.

2 **Comment**

3  
4 **Paragraph (1)** – This article rests and is linked to the mergers provisions in an enacting  
5 state’s limited liability company statute.

6  
7 **Paragraph (2)** – These requirements supplement the requirements stated in the merger  
8 provisions of an enacting state’s limited liability company statute. *See, e.g.*, Uniform Limited  
9 Liability Company Act (2006) (Last Amended 2013), Section 1022 (stating what the plan of  
10 merger must include).

11  
12 **Paragraph (2)(C)(i)-(iii)** – These provisions are the analog to Uniform Limited Liability  
13 Company Act (2006) (Last Amended 2013), Section 1002(a)(3) (requiring a plan of merger to  
14 state “the manner of converting the interests in each party to the merger into interests, securities,  
15 obligations, money, other property, rights to acquire interests or securities, or any combination of  
16 the foregoing”).

17  
18 **Paragraph (2)(C)(ii)** – This provision encompasses any type of equity shuffle, including  
19 “taking out” a person as an associated member or protected series transferee.

20  
21 **SECTION 606. STATEMENT OF MERGER.** In a merger under Section 604, the  
22 statement of merger must:

23 (1) comply with [cite the provisions of this state’s limited liability company statute  
24 pertaining to the contents of a statement of merger]; and

25 (2) include as an attachment the following records, each to become effective when the  
26 merger becomes effective:

27 (A) for a protected series of a merging company being terminated as a result of  
28 the merger, a statement of termination signed by the company;

29 (B) for a protected series of a non-surviving company which after the merger will  
30 be a relocated protected series:

31 (i) a statement of relocation signed by the non-surviving company which  
32 contains the name of the company and the name of the protected series before the merger and  
33 afterwards; and

1 (ii) a statement of protected series designation signed by the surviving  
2 company; and

3 (C) for a protected series being established by the surviving company as a result  
4 of the merger, a statement of designation signed by the company.

5 **Comment**

6 **Paragraph (1)** – This article rests and is linked to the mergers provisions in an enacting  
7 state’s limited liability company statute.

8  
9 **Paragraph (2)** – These requirements supplement the requirements stated in the merger  
10 provisions of an enacting state’s limited liability company statute. *See, e.g.*, Uniform Limited  
11 Liability Company Act (2006) (Last Amended 2013), Section 1022 (stating what the plan of  
12 merger must include).

13  
14 **Paragraph (2)(B)(i)** – This statement is to provide information for the public record of a  
15 non-surviving company.

16  
17 **Paragraph (2)(B)(ii)** – This statement is to provide information for the public record of  
18 the surviving company.

19  
20 **SECTION 607. EFFECT OF MERGER.** When a merger under Section 604 becomes  
21 effective, in addition to the effects stated in [cite the provisions of this state’s limited liability  
22 company statute stating the effect of a merger]:

23 (1) as provided in the plan of merger, each protected series of each merging company  
24 which was established before the merger:

25 (A) is a relocated protected series or continuing protected series; or

26 (B) is dissolved, and then wound up and terminated;

27 (2) any protected series to be established as a result of the merger is established;

28 (3) any relocated protected series or continuing protected series is the same person

29 without interruption as it was before the merger;

30 (4) all property of a relocated protected series or continuing protected series continues to

1 be vested in the protected series without transfer, reversion, or impairment;

2 (5) all debts, obligations, and other liabilities of a relocated protected series or continuing  
3 protected series continue as debts, obligations, and other liabilities of the protected series;

4 (6) except as otherwise provided by law or the plan of merger, all the rights, privileges,  
5 immunities, powers, and purposes of a relocated protected series or continuing protected series  
6 remain in the protected series;

7 (7) the new name of a relocated protected series may be substituted for the former name  
8 of the protected series in any pending action or proceeding;

9 (8) if provided in the plan of merger:

10 (A) a person becomes an associated member or protected series transferee of a  
11 relocated protected series or continuing protected series;

12 (B) a person becomes an associated member of a protected series established by  
13 the surviving company as a result of the merger;

14 (C) any change in the rights or obligations of a person in the person's capacity as  
15 an associated member or protected series transferee of a relocated protected series or continuing  
16 protected series take effect; and

17 (D) any consideration to be paid to a person that before the merger was an  
18 associated member or protected series transferee of a relocated protected series or continuing  
19 protected series is due; and

20 (9) any person that is a member of a relocated protected series becomes a member of the  
21 surviving company, if not already a member.

22 **Comment**

23 **Paragraph (1)(B)** – This provision triggers Section 502 and thereby (through  
24 extrapolation) the winding up requirements of an enacting state's limited liability company

1 statute. These requirements include settling debts with creditors. The rule here is the same as for  
2 any other dissolution and winding up of a protected series.  
3

4 **Paragraphs (4)-(8)** – These provisions are derived from Uniform Limited Liability  
5 Company Act (2006) (Last Amended 2013), Section 1046(a) (effects of conversion). The list of  
6 effects does not include the taking effect of amendments to the operating agreement, because the  
7 merger provisions of an enacting state’s limited liability company statute should address the  
8 point. *See, e.g.*, Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section  
9 1026(a)(8)(B) (stating that, “if the surviving entity exists before the merger .... its private organic  
10 rules that are to be in a record, if any, are amended to the extent provided in the plan of merger”).  
11

12 **Paragraph (8)(A)** – This provision is subject to Section 303(a): “A protected series  
13 transferable interest of a protected series must be owned initially by an associated member of the  
14 protected series or the series limited liability company that establishes the protected series.”  
15 Thus, for a person to become a protected series transferee as a result of a merger, the plan of  
16 merger would have to provide for an associated member or protected series transferee to transfer  
17 a protected series transferable interest to the person.  
18

19 **Paragraph (8)(B)** – Due to Section 303(a), discussed in the comment to Paragraph  
20 (8)(A), a merger under Section 604 cannot cause a person to become a protected series transferee  
21 of a protected series established as a result of the merger.  
22

## 23 **SECTION 608. APPLICATION OF SECTION 404 AFTER MERGER.**

24 (a) A creditor’s right that existed under Section 404 immediately before a merger under  
25 Section 604 may be enforced after the merger in accordance with the following rules:

26 (1) A creditor’s right that existed immediately before the merger against the  
27 surviving company, a continuing protected series, or a relocated protected series continues  
28 without change after the merger.

29 (2) A creditor’s right that existed immediately before the merger against a non-  
30 surviving company:

31 (A) may be asserted against an asset of the non-surviving company which  
32 vested in the surviving company as a result of the merger; and

33 (B) does not otherwise change.

34 (3) Subject to subsection (b):

1 (A) In addition to the remedy stated in paragraph (1), a creditor with a  
2 right that existed immediately before the merger against a non-surviving company or a relocated  
3 protected series may assert the right against:

4 (i) an asset of the surviving company, other than an asset of the  
5 non-surviving company which vested in the surviving company as a result of the merger;

6 (ii) an asset of a continuing protected series; or

7 (iii) an asset of a protected series established by the surviving  
8 company as a result of the merger.

9 (B) In addition to the remedy stated in paragraph (2), a creditor with a  
10 right that existed immediately before the merger against the surviving company or a continuing  
11 protected series may assert the right against:

12 (i) an asset of a relocated protected series; or

13 (ii) an asset of a non-surviving company which vested in the  
14 surviving company as a result of the merger.

15 (b) Solely for the purposes of subsection (a)(3) and Section 404(b)(1)(A, 404(b) (2)(A),  
16 and 404(b)(3)(A), the incurrence date is deemed be the date on which the merger becomes  
17 effective.

18 (c) The merger does not affect the manner in which Section 404 applies to a liability  
19 incurred after the merger.

20 **Comment**

21 [TBA]



1 [ARTICLE] 7

2 FOREIGN PROTECTED SERIES

3 SECTION 701. GOVERNING LAW. The law of the jurisdiction of formation of a  
4 foreign series limited liability company governs:

5 (1) the internal affairs of a foreign protected series of the company, including:

6 (A) relations among any associated members of the foreign protected series;

7 (B) relations among the foreign protected series and:

8 (i) any associated member;

9 (ii) the protected series manager; or

10 (iii) any protected series transferee;

11 (C) relations between any associated member and:

12 (i) the protected series manager:

13 (ii) any protected series transferee;

14 (D) the rights and duties of a protected series manager;

15 (E) governance decisions affecting the activities and affairs of the foreign  
16 protected series and the conduct of those activities and affairs; and

17 (F) procedures and conditions for becoming an associated member or protected  
18 series transferee;

19 (2) relations between the foreign protected series and:

20 (A) the company;

21 (B) another foreign protected series of the company;

22 (C) a member of the company which is not an associated member of the foreign  
23 protected series;

1 (D) a foreign protected series transferee of another foreign protected series of the  
2 company; and

3 (E) a transferee of a transferable interest of the company;

4 (3) except as otherwise provided in Section 703, the liability of a person for a debt,  
5 obligation, or other liability of a foreign protected series of a foreign series limited liability  
6 company if the debt, obligation, or liability is asserted solely by reason of the person being or  
7 acting as:

8 (A) an associated member, protected series transferee, or protected series manager  
9 of the foreign protected series;

10 (B) a member of the company not an associated member of the foreign protected  
11 series;

12 (C) a series transferee of another foreign protected series of the company;

13 (D) a protected series manager of another foreign protected series of the company;

14 (E) a manager of the company; or

15 (F) a transferee of a transferable interest of the company; and

16 (4) except as otherwise provided in Section 703:

17 (A) the liability of the series limited liability company for a debt, obligation, or  
18 other liability of a protected series of the company if the debt, obligation, or liability is asserted  
19 solely by reason of the protected series being a protected series of the company or the company:

20 (i) being or acting as a protected series manager of the protected series;

21 (ii) having the protected series manage the company; or

22 (iii) owning a protected series transferable interest of the protected series;

23 and

1 (B) the liability of a foreign protected series for a debt, obligation, or other  
2 liability of the company or another foreign protected series of the company if the debt,  
3 obligation, or liability is asserted solely by reason of the protected series:

4 (i) being a protected series of the company or having the company or  
5 another protected series of the company be or act as protected series manager of the protected  
6 series; or

7 (ii) managing the company or being or acting as a series manager of  
8 another protected series of the company.

9 **Legislative Note:** Section 703 applies the law of an enacting state to shield and asset-by-asset  
10 exposure issues in some circumstances and therefore arguably conflicts in part with Uniform  
11 Limited Liability Company Act (2006) (Last Amended 2013), Section 901(a) (2) (providing that  
12 “[t]he law of the jurisdiction of formation of a foreign limited liability company governs the  
13 liability of a member as member and a manager as manager for a debt, obligation, or other  
14 liability of the company”) and does partially contradict Section 901(a)(3) (providing that “[t]he  
15 law of the jurisdiction of formation of a foreign limited liability company governs... the liability  
16 of a series of the company”). An enacting state should amend Uniform Limited Liability  
17 Company Act (2006) (Last Amended 2013), Section 901(a)(2) and (3) (or any comparable  
18 provisions in the state’s limited liability company statute) to be subject to Section 703. For an  
19 explanation of “asset-by-asset exposure”, see Prefatory Note, Part 7-C and Section 404,  
20 comment.

## 21 22 **Comment**

23  
24 **Paragraphs (1) and (2)** – These provisions parallel the choice of law provisions in  
25 Section 105(1) and (2). The comments to those provisions apply here as well.

26  
27 **Paragraph (3)** – Except as stated in Section 703, this provision states the choice of law  
28 for matters pertaining to the traditional, vertical shield. Subject to the exception, this section  
29 parallels the choice of law provision in Section 105(3), and, likewise subject to the exception, the  
30 comment to that provision applies here as well. For an explanation of vertical shields, see  
31 Prefatory Note, Part 7-A.

32  
33 **Paragraph 4** – Except as stated in Section 703, this provision states the choice of law  
34 rules pertaining to the horizontal shields of a foreign series limited liability company or foreign  
35 protected series. Subject to the exception, this provision parallels Section 105(4) and (5), and,  
36 likewise subject to the exception, the comments to those provisions apply here as well. For an  
37 explanation of horizontal shields, see Prefatory Note, Part 7-B.



1 from an act or omission in this state.

2 (b) Section 404 applies to an asset of a foreign series limited liability company or foreign  
3 protected series if:

4 (1) the asset is real or tangible property located in this state;

5 (2) the claimant is a resident of this state or doing business or registered to do  
6 business in this state, or the claim under Section 404 is to enforce a judgment, or to seek a pre-  
7 judgment remedy, pertaining to a liability arising from the law of this state or an act or omission  
8 in this state; and

9 (3) the asset is not identified in the records of the foreign company or foreign  
10 protected series in a manner comparable to the manner required by Section 301.

11 **Legislative Note:** *This section raises several issues, one of which is discussed in the Legislative*  
12 *Note to Section 701 and another in the Legislative Note to Section 803. In addition, if an*  
13 *enacting state has omitted Section 402(b), the state should revise Section 703(a) accordingly.*  
14 *For further discussion of this point, see the Legislative Note to Section 402.*

15

16

### Comment

17

18 **Subsection (a)** – Section 401(a) and (b) state limitations of liability comprising  
19 respectively the vertical and horizontal shields. Claims “seeking to disregard” such limitations  
20 of liability are traditionally referred to as “piercing” claims or, in some circumstances, “affiliate  
21 liability” claims. Section 402(a) applies an enacting state’s existing jurisprudence on piercing  
22 and affiliate liability to domestic series limited liability companies and domestic protected series  
23 as “if each protected series of the series limited liability company were a limited liability  
24 company: (1) organized separately from the company that established the protected series; and  
25 (2) distinct from the company and any other protected series of the company.”

26

27 In contrast, this provision—i.e., Section 703(a)—applies an *enacting state’s* jurisprudence  
28 on piercing and affiliate liability to *foreign* series limited liability companies and *foreign*  
29 protected series in carefully and narrowly delineated circumstances. This stance is unusual but is  
30 neither novel nor in the circumstances unwarranted.

31

32 Virtually all, if not all, limited liability company statutes provide that the law of the  
33 foreign limited liability company’s jurisdiction of formation governs piercing claims. *See, e.g.,*  
34 *Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 901(a)(2).* But  
35 the situation seems to be the result of “path dependence” on an initially unexplained choice. The  
36 approach of limited liability company statutes reflects the approach of the Uniform Limited

1 Partnership Act in effect in most states when limited liability company statutes were first being  
2 enacted. *See* Uniform Limited Partnership Act (1976 with 1985 amendments) § 901(i) (stating  
3 that “the laws of the state under which a foreign limited partnership is organized govern its  
4 organization and internal affairs and the liability of its limited partners”).  
5

6 It is entirely unclear why the uniform partnership act codified what had previously been a  
7 rule of common law. According to an official comment to the 1985 version the Uniform Limited  
8 Partnership Act, Section 901 “first appeared in the 1976 Act.” However, the comment provides  
9 no explanation for this variation from the original Uniform Limited Partnership Act of 1916,  
10 which relied on common law choice of law principles for both the “internal affairs doctrine” and  
11 piercing claims. *See Se. Texas Inns, Inc. v. Prime 36 Hosp. Corp.*, 462 F.3d 666, 672-76 (6th Cir.  
12 2006) (discussing at length which state law to apply to a claim to pierce the veil of a limited  
13 partnership, making no reference to the limited partnership statute of the forum state [Tennessee],  
14 determining that “the choice-of-law question is not outcome-determinative in this case,” and  
15 therefore not deciding the issue).  
16

17 In the corporate context, the choice of law has long been a matter of case law. *See*  
18 *Dassault Falcon Jet Corp. v. Oberflex, Inc.*, 909 F. Supp. 345, 348-49 (M.D.N.C. 1995);  
19 Restatement (Second) of Conflict of Laws (1971) § 307 (“The local law of the state of  
20 Incorporation will be applied to determine the existence and extent of a shareholder’s liability to  
21 the corporation for assessments or contributions and to its creditors for corporate debts.”).  
22

23 Although the Restatement might suggest the rule is invariable, venerable Supreme Court  
24 precedent allows for exceptions. *Pinney v. Nelson*, 183 U.S. 144, 150, 22 S. Ct. 52, 55, 46 L. Ed.  
25 125 (1901) (“Contracting with reference to the laws of that state [not the state of incorporation]  
26 [the shareholders] . . . must be assumed to know the provisions of those laws; that by them a  
27 personal liability was cast upon the stockholders in corporations formed under the laws of the  
28 state, and that that same liability was also imposed upon the stockholders of corporations formed  
29 under the laws of other states and doing business within California.”).  
30

31 Given the novel concept of one legal person existing under the aegis of another legal  
32 person and the novel construct of a horizontal shield, the Uniform Law Commission chose to  
33 revert to common law flexibility rather than merely to reiterate a codification that entered the law  
34 of unincorporated organizations without explanation and whose rationale has never been fully  
35 explored.  
36

37 **Subsection (a)(1)-(2)** – These provisions limit Section 703(a) to matters in which an  
38 enacting state has a substantial and direct interest – whether due to the nature of the claimant, the  
39 facts giving rise to the claim, the law providing the legal basis for the claim, or some  
40 combination.  
41

42 **Subsection (b)** – As does entity law generally, this act permits a business to exist under  
43 the law of foreign jurisdiction even while conducting all its activities in the enacting state. This  
44 provision merely prevents easy evasion of the act’s asset-by-asset exposure rule. For an  
45 explanation of that rule, see Prefatory Note, Part 7-C and Section 404, comment.  
46

1           **Subsection (b)(1)-(2)** – These provisions are similar in effect and rationale to Subsection  
2 (a)(1) and (2).

3  
4           **Subsection (b)(3)** – “[A] manner comparable” is emphatically not “a manner exactly  
5 like.” What matters is whether information exists and is sufficiently accessible to enable “to  
6 permit a disinterested, reasonable individual” to do the identification and make the  
7 determinations described in Section 404(a) and (b).

8  
9           **SECTION 704. REGISTRATION OF FOREIGN PROTECTED SERIES.**

10           (a) Except as otherwise provided in this section and subject to Section 703, the law of this  
11 state governing the registration of a foreign limited liability company to do business in this state,  
12 including the consequences of not complying with that law, applies to a foreign protected series  
13 of foreign series limited liability company as if the foreign protected series were a foreign  
14 limited liability company that is formed separately from the actual foreign company and distinct  
15 from the actual foreign company and any other foreign protected series of the actual foreign  
16 company.

17           (b) An application by a foreign protected series of a foreign series limited liability  
18 company for registration to do business in this state must include:

19                   (1) the name and jurisdiction of formation of the foreign company; and

20                   (2) if the company has other foreign protected series, the name and street and  
21 mailing address of an individual who knows the name and street and mailing address of each  
22 other foreign protected series of the company and the protected series manager of and agent for  
23 service of process for each other foreign protected series of the company.

24           (c) The name of a foreign protected series applying for registration or registered to do  
25 business in this state must comply with Section 202. A foreign protected series may comply  
26 with Section 202 using [cite this state’s fictitious name statute], if the [fictitious] name complies  
27 with Section 202.

1 (d) The requirement in [cite to the provision of this state’s limited liability company  
2 statute pertaining to updating registration information] to amend a statement of registration to  
3 update information applies to the information required by subsection (b).

4 **Legislative Note:** *Under the Uniform Limited Liability Company Act (2006) (Last Amended*  
5 *2013), Section 903, a foreign registration statement does not include a certificate of good*  
6 *standing from the filing office of the foreign limited liability company’s jurisdiction of formation.*  
7 *Accordingly, this act does not refer to any analogous certificate pertaining to a foreign protected*  
8 *series. If an enacting state’s limited liability company statute does require a certificate of good*  
9 *standing at the limited liability company level, the state should consider an analogous*  
10 *requirement at the foreign protected series level. An enacting state that imposes an analogous*  
11 *requirement will have to decide how to deal with a would-be registrant established under the law*  
12 *of a jurisdiction in which a protected series is established without the filing of any public record*  
13 *pertaining to the protected series.*

14  
15 **Comment**  
16

17 **Subsection (b)(2)** – The information the individual is required to know parallels the  
18 information required to be disclosed under Section 705(a) (requiring disclosure in the early  
19 course of litigation).  
20

21 **SECTION 705. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED**  
22 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES PARTY TO**  
23 **PROCEEDING.**

24 (a) Not later than [30] days after becoming a party to a proceeding before a civil,  
25 administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United  
26 States located in this state:

27 (1) a foreign series limited liability company shall disclose to each other party the  
28 name and street and mailing address of:

29 (A) each foreign protected series of the company; and

30 (B) each protected series manager of and a registered agent for service of  
31 process for each foreign protected series of the company; and

32 (2) a foreign protected series of a foreign series limited liability company shall



1 disclose to each other party the name and street and mailing address of:

2 (A) the company, each manager of the company, and an agent for service  
3 of process for the company; and

4 (B) any other foreign protected series of the company and each protected  
5 series manager of and an agent for service of process for any other foreign protected series.

6 (b) The time to make disclosure under subsection (a) is tolled if the foreign series limited  
7 liability company or foreign protected series challenges the personal jurisdiction of the tribunal.

8 (c) If a foreign series limited liability company or foreign protected series does not  
9 comply with subsection (a), a party to the proceeding may:

10 (1) move the tribunal to treat the noncompliance as a failure to comply with the  
11 tribunal's discovery rules; or

12 (2) bring a separate proceeding in [appropriate court] to enforce the requirements  
13 stated in subsection (a).

14 **Comment**

15

16 This section pertains to the same information encompassed in Section 704(b)(2)  
17 (requiring the application for registration by a foreign protected series to include “the name and  
18 street and mailing address of an individual who knows the name and street and mailing address  
19 of each other foreign protected series of the company and the protected series manager of and  
20 agent for service of process for each other foreign protected series of the company.”).

21

22 **Subsection (a)(2)** – Depending on the applicable foreign limited liability company  
23 statute and the operating agreement of relevant foreign series limited liability company, a foreign  
24 protected series might lack access to the information this provision requires. In that event, this  
25 provision should cause a tribunal hearing the matter to allow a party to subpoena the required  
26 information from the foreign series limited liability company.

27

1 [ARTICLE] 8

2 MISCELLANEOUS PROVISIONS

3 SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

4 applying and construing this uniform act, consideration must be given to the need to promote  
5 uniformity of the law with respect to its subject matter among states that enact it.

6 SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

7 AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the  
8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but  
9 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
10 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
11 U.S.C. Section 7003(b).

12 [SECTION 803. TRANSITIONAL PROVISIONS.

13 (a) Before [all-inclusive date], this [act] governs only:

14 (1) a series limited liability company formed, or a protected series established, on  
15 or after [the effective date of this [act]]; and

16 (2) a limited liability company that is a series limited liability company before  
17 [the effective date of this [act]] and elects, in the manner provided in its operating agreement or  
18 by law for amending the operating agreement, to be subject to this [act].

19 (b) If a series limited liability company elects under subsection (a)(2) to be subject to this  
20 [act]:

21 (1) the election applies to each protected series of the company, whenever  
22 established; and

23 (2) a manager of the company has the right to sign and deliver to the [Secretary of

1 State] for filing any record necessary to comply with this [act], whether the record pertains to the  
2 company, a protected series of the company, or both.

3 (c) On and after [all-inclusive date], this [act] governs all series limited liability  
4 companies and protected series.

5 [(d) Until [one year after the effective date of this [act] [the date on which this act was  
6 enacted]], Section 703 does not apply to a foreign protected series that was established before  
7 [the effective date of this [act] [the date on which this act was enacted] or a foreign limited  
8 liability company that became a foreign series limited liability company before [the effective  
9 date of this [act] [the date on which this act was enacted]].

10 ***Legislative Note:** At first glance, subsection (d) may seem anomalous. As a general proposition,*  
11 *statutory changes applicable to foreign business organizations take effect when the relevant*  
12 *enactment takes effect – i.e., no delayed effective date. Typically, however, such changes*  
13 *establish or modify rules to which an organization cannot respond proactively; most often the*  
14 *changes involve formalities. Section 703 is decidedly atypical; it imposes important substantive*  
15 *requirements that necessitate a proactive response. Giving Section 703 immediate effect might*  
16 *be seen as unfair if this act takes effect immediately in an enacting state that has previously*  
17 *countenanced foreign series limited liability companies and foreign protected series under far*  
18 *less demanding rules.*

19  
20 **SECTION 804. SAVINGS CLAUSE.** This [act] does not affect an action commenced,  
21 proceeding brought, or right accrued before [the effective date of this [act]].

22 **[SECTION 805. SEVERABILITY CLAUSE.** If any provision of this [act] or its  
23 application to any person or circumstance is held invalid, the invalidity does not affect other  
24 provisions or applications of this [act] which can be given effect without the invalid provision or  
25 application, and to this end the provisions of this [act] are severable.]

26 ***Legislative Note:** Include this section only if this state lacks a general severability statute or*  
27 *decision by the highest court of this state stating a general rule of severability.*

1           **SECTION 806. REPEALS; CONFORMING AMENDMENTS.**

2           (a) ...

3           (b) ...

4           (c) ...

5           **SECTION 807. EFFECTIVE DATE.** This [act] takes effect . . . .