

Introduction to 2017 Annual Meeting Reading of the  
Limited Liability Company Protected Series Act  
(f/k/a Limited Liability Company Protected Series Act  
and Series of Unincorporated Business Entities Act)

Final Reading to Take Place in July, 2017

In 2016, as the Drafting Committee sought to increase transparency, creditor protections, and clarity, the Committee encountered a significant number of new and complex issues. Although an extra drafting session allowed the Committee to develop tentative resolutions for most of the new issues, by April, 2016 it was apparent that the Committee required additional time to vet each new solution and make sure that no new solution interferes with any previously settled matter. From fall, 2016, through early spring, 2017, the Committee had 12 internet meetings (using Adobe Connect). Each meeting lasted 90 minutes and was based on an agenda and a briefing menu.

The 2017 reading will be the act's final reading.

Reading the Prefatory Note is Highly Recommended

A more complete introduction to this act is found in the Prefatory Note, located at the beginning of the act. The Prefatory Note addresses 10 major issues:

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| Part 1  | The Protected Series Construct  |
| Part 2  | “Protected Series” as the Term of Art   |
| Part 3  | The Import of the Protected Series Construct  |
| Part 4  | Growing Popularity of Series Limited Liability Companies  |
| Part 5  | Structure of the Act – A Module to be Enacted as Part of an Enacting State’s Current Limited Liability Company Statute  |
| Part 6  | Extrapolation – Leveraging by Analogy the Rules of an Enacting State’s Limited Liability Company Statute <ul style="list-style-type: none"><li>A. The Need for and Meaning of “Extrapolation”</li><li>B. An Additional Benefit – Parallelism in Concept and Terminology</li></ul>   |
| Part 7  | Non-Liability and Non-Recourse Rules and the Act’s Novel Approach to Horizontal Shields <ul style="list-style-type: none"><li>A. The Two-Fold Nature of a Liability Shield</li><li>B. Horizontal Shields – Non-Liability and Non-Recourse Rules Distinguished to Create an Important Inducement to Good Recordkeeping</li><li>C. The Novel and Important Inducement – “Asset by Asset Exposure”</li></ul> |
| Part 8  | Overcoming the Shields  |
| Part 9  | Traditional and Internal Shields Compared in Tabular Form   |
| Part 10 | Clarity and Safeguards of this Act Compared to Current Protected Series Statutes [reserved pending updating]  |

## The Major Changes in the Act Made in 2015-2016 and 2016-2017

### *2015-2016*

In the 12 months following the 2015 annual meeting, the major improvements involved increasing transparency, increasing protections for consumers and creditors, increasing control over protected series from foreign jurisdictions (*i.e.*, jurisdictions other than the enacting state), and restricting the act to apply only to limited liability companies.

### *2016-2017*

In preparation for the Act's final reading, the Drafting Committee continued to focus on transparency, protections for consumers and creditors, and increasing control over protected series from foreign jurisdictions. In addition, the Committee:

- considered whether the Act would permit series limited liability companies to engage in entity transactions (mergers, interest exchanges, conversions, and domestications), decided to authorize only mergers involving domestic limited liability companies, and developed merger provisions that both rely on existing law and include unique provisions due to the novel concept of protected series; and
- substantially improved the mechanics of extrapolation.

For a detailed explanation of extrapolation, see Part Six of the Prefatory Note (Extrapolation – Leveraging by Analogy the Rules of an Enacting State's Limited Liability Company Statute).

### Comparison to Existing Law

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 19 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

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
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
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
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)

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute address specifically the rights of judgment creditors of associated members?	Yes; 403(1)	No	No	No
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
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))

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</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
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
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