

DRAFT
FOR DISCUSSION ONLY

LIMITED LIABILITY COMPANY PROTECTED SERIES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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March 7, 2016

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PROTECTED SERIES ACT**

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LIMITED LIABILITY COMPANY PROTECTED SERIES ACT

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1 **LIMITED LIABILITY COMPANY PROTECTED SERIES ACT**

2
3 **Prefatory Note – Preliminary¹**

4
5 This preliminary prefatory note has nine parts. Parts 1-8 address conceptual issues. Parts 9-11
6 explain how the act is structured. Part 12 compares the act to existing law.

7
8
9 *Conceptual Issues*

- 10
11 1. The Series Construct
12 2. “Protected Series” as the Term of Art
13 3. The Import of the Protected Series Construct
14 4. Uses and Growing Popularity of Series Limited Liability Companies
15 5. The Two-Fold Nature of the Internal Shields: Non-Liability and Non-Recourse Rules
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23 9. Structure of the Act – A Module to be Enacted as Part of a State’s Current Limited
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29
30 *The Act Compared to Existing Law*

- 31
32 12. Clarity and Safeguards of this Act Compared to Current Protected Series Statutes
33
34

35 ***Conceptual Issues***

36
37 **1. The Series Construct**

38
39 As provided by statutes in 12 states, the District of Columbia, and Puerto Rico,² the series

¹ The first part of this Prefatory Note is adopted from Daniel S. Kleinberger, “Series of Unincorporated Business Entities: The Construct, the Import, the Recent Activity of the Uniform Law Commission, and the Issues on the Table,” XXXI THE LLC & PARTNERSHIP REPORTER 52; Daniel S. Kleinberger, “Series of Unincorporated Business Entities: The Mobius Strip and Klein Bottle of Business Entity Law,” BUSINESS LAW TODAY (February 2015).

² As of February 25, 2015, the following statutes provide for series within a limited liability company. ALA. CODE §§ 10A-5A-11.01-.16 (2015); DEL. CODE ANN. tit. 6, §18-215 (West

construct has the following aspects:

- an identifiable set of assets segregated within a limited liability company (“a series limited liability company”),³
- the assets:
 - comprise a protected series, empowered to conduct activities in its own name and right;
 - are obligated solely to persons asserting claims pertaining to those assets or activities; and
 - are not responsible to persons asserting claims arising from the assets or activities of the series organization or any other set of assets segregated within the series organization; and
 - perhaps are associated with or more members of the series limited liability company,⁴ but not necessarily; and
- distributions arising from the assets and activities go to:
 - the series limited liability company, if the series has no associated member; or
 - otherwise, the members associated with the series.

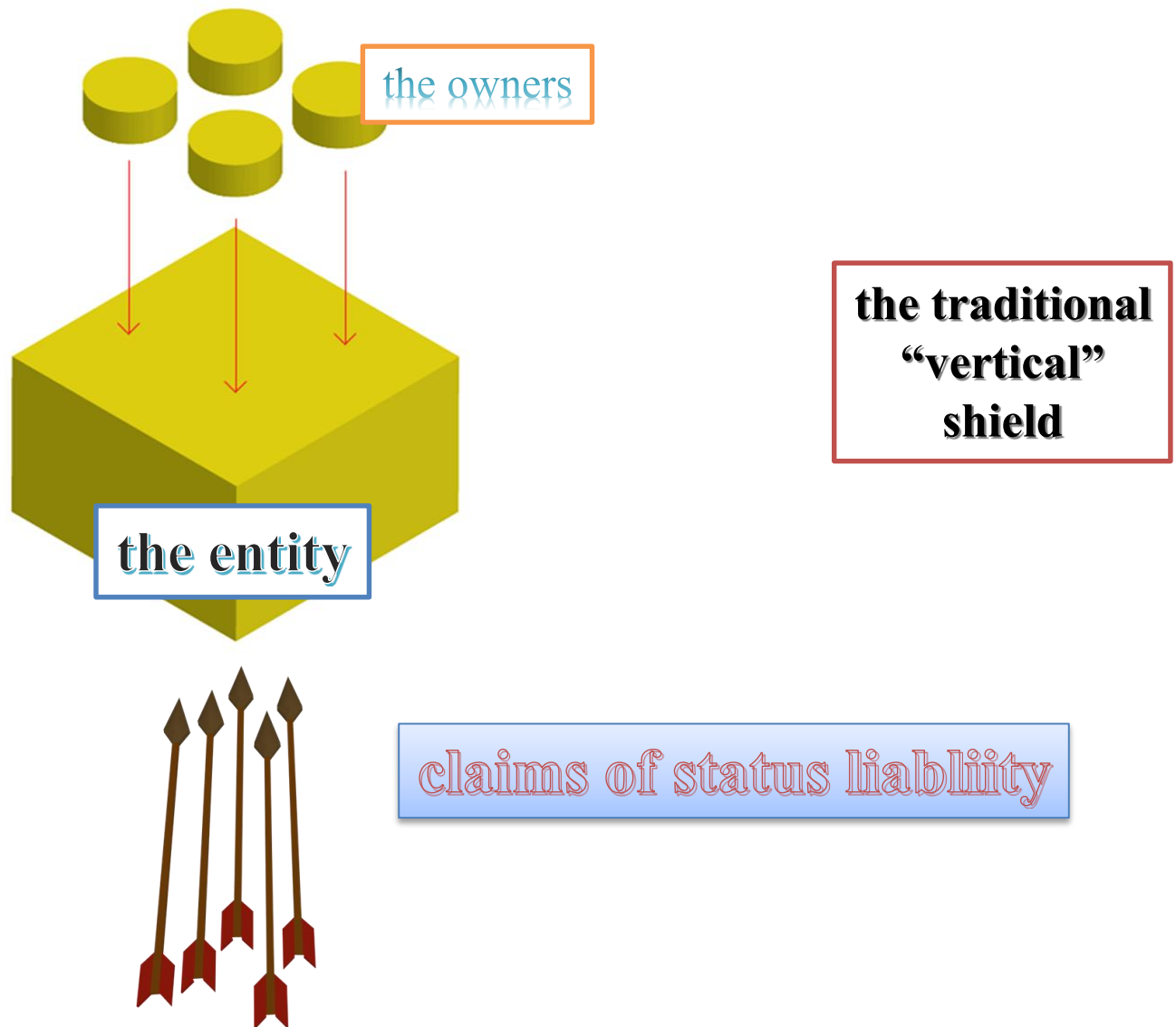
Thus, a series limited liability company contains “internal shields” – *i.e.*, asset partitions confining the assets and liabilities of each protected series solely to that protected series. These “horizontal” shields are conceptually and practically quite different from the traditional, “vertical” shield that protects the owners of an entity from automatic, vicarious liability for the entity’s obligations.⁵

2015); D.C. CODE ANN. §29-802.06 (2015); 805 ILL. COMP. STAT. ANN. 180/37-40 (West 2014); 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).

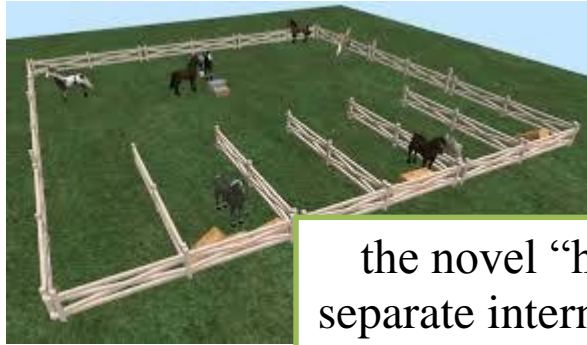
³ The segregation is not necessarily physical and in some cases could not be. Delaware law authorizes protected series within a limited partnership, Del. Code Ann. tit. 6, §17-218 (2015), but very few Delaware limited partnerships provide for protected series.

⁴ Allowing a non-owner to be associated with a series would cause daunting complexity while producing very little (if any) benefit.

⁵ Although the following usage has not yet stabilized, strictly speaking: (i) a protected series has one shield (encircling its assets and operations like a corral); and (ii) a series limited liability company encompasses at least two internal shields. (By definition, a series organization has at least one protected series. Section 102(23). In a series organization with one protected series, one shield encircles the assets and operations of the protected series, and one shield encircles the assets and operations of the series organization.)



1. A “series” limited liability company provides novel, “horizontal” shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of the company. A horizontal shield likewise protects the series limited liability company (and its assets) from creditors of any protected series of the company.



the novel “horizontal” shield:
separate internal compartments of
assets & activities

2. “Protected Series” as the Term of Art

The term “series” derives from the investment trust context. In that context, the term may well be apt; in the broader context, the term is confusing. “Series” has an established and very different meaning with regard to bonds, corporate stock, etc. To avoid confusion, this act uses the term “protected series.”⁶

3. The Import of the Protected Series Construct

The protected series:

- is one of the most significant developments in the law of business organizations since the advent of the limited liability company;
- pushes the conceptual envelope of entity law by providing for a quasi-distinct legal construct existing *within* an overarching entity;
- establishes a new type of liability shield – rather than protecting the owners of an organization from vicarious liability for the organization’s debts, obligations, and other liabilities, the “internal shields” of a series protect the assets of one protected series from the judgment creditors of the series organization and of any other protected series of the series organization.⁷

⁶ For this reason, the act never refers merely to “a series.”

⁷ This construct has long existed in the context of investment trusts, but in that context cross-series liability claims do not arise. Therefore, the internal shields are non-controversial. In 2009, the Conference adopted the Uniform Statutory Trust Entity Act, which provides a uniform vehicle for investment trusts. See Uniform Statutory Trust Entity Act (2009) (Last Amended 2013) §§ 401 through 405.

1 4. Uses for and Growing Popularity of Series Limited Liability Companies

2
3 **TBA**

4
5 5. The Two-Fold Nature of the Internal Shields:
6 Non-Liability and Non-Recourse Rules

7
8 Like the traditional “vertical shield, a protected series’ horizontal shield has two separate but
9 related aspects:

- 10
- 11 • the non-liability rule – a protected series is not liable for the debts of the series limited
12 liability company nor any other protected series of the company and *vice versa*; and
 - 13
 - 14 • the non-recourse rule – the *associated* property of a protected series is shielded against
15 collection efforts of judgment creditors of the series limited liability company or of any
16 other protected series of the company.⁸
 - 17

18 Current protected series statutes do not treat these two rules separately. This act does, in order to
19 provide a novel, important protection for creditors and a novel, important inducement for good
20 recordkeeping.

21
22
23 6. Non-Liability and Non-Recourse Rules:
24 Contrasting the Traditional Corporate/LLC Liability Shield with
25 the Internal Shields of a Series Limited Liability Company

26
27 With the traditional corporate/LLC liability shield, the non-liability provision implicitly (but
28 ineluctably) protects the property of owners from being used to satisfy a judgment against the
29 entity. Simply put, if an owner is not liable for the entity debt, the owner’s assets are not
30 available to satisfy the debt.

31
32 In the context of protected series, under this act the analysis is more complex. Establishing a
33 protected series invokes the non-liability rule, but to invoke the non-recourse rule it is
34 necessary that property be *associated property* of the protected series. Put another way, an
35 asset owned by a protected series but not properly associated with the protected series is up
36 for grabs not only to a person asserting claims against the protected series but also to a
37 claimant of the series limited liability company and a claimant of any other protected series
38 of the series limited liability company.

39
40 EXAMPLE: Conference, LLC, a series limited liability company, has two
41 protected series, Conference, LLC Series Alpha (“Alpha”) and Conference, LLC
42 Series Beta (“Beta”). Each protected series owns assets, and each asset is
43 associated property of the protected series that owns the asset. A judgment
44 creditor of Alpha attempts to levy on property of Beta. The attempt will fail for

⁸ Association of property is a matter of proper recordkeeping. See Section 302.

1 two reasons: (1) The attempt is an effort to hold Beta liable for Alpha's debts,
2 which contravenes the non-liability rule. (2) The no recourse rule protects Beta's
3 associated property except as to creditors of Beta.
4

5 EXAMPLE: Same facts, except that asset owned by Beta is "non-associated
6 property" – i.e., not associated with Beta (nor with Alpha or the series limited
7 liability company). Although the item remains Beta's property, the item is
8 equally subject to levy by a judgment creditor of Alpha, Beta, or the series limited
9 liability company. (If a judgment creditor of Alpha or the series organization
10 successfully levies on the item, Beta may have an unjust enrichment claim against
11 the judgment debtor and a damage action against whoever failed to associate the
12 item with Beta.)
13
14

15 7. Overcoming the Shield

16

17 "Piercing the veil" is the foremost doctrine for overcoming the traditional, vertical shield
18 separating an entity from its owners. "Conflation" is perhaps a more descriptive term, because
19 the piercing doctrine ignores the formal separateness of entity and owner and treats them as if
20 they were one. When a creditor succeeds with a piercing claim, the shield falls *in toto*. That is,
21 all the owner's non-exempt assets are available to the judgment creditor of the entity.⁹
22

23 Doubtlessly, the piercing doctrine applies the vertical shield between a series limited liability
24 company and its owners.¹⁰ Presumably, the doctrine will also apply to the vertical shield
25 between a protected series and its associated members. Likewise, the doctrine (or related
26 theories of affiliate liability) will apply to the internal, horizontal shields – *i.e.*, in the proper
27 circumstances, a court will disregard the internal shields and negate the non-recourse rule as well
28 as the non-liability rule.
29

⁹ Piercing is based on a factor test. In the corporate context, two of the most prominent factors are the disregard of governance formalities and disregard of economic separateness between the entity and owners. "In the realm of LLCs, [the governance] factor is inappropriate, because informality of organization and operation is both common and desired." ULLCA (2013) § 304(b), cmt. Some LLC statutes negate governance as a piercing factor entirely, and some courts have discarded or downgraded the factor for LLC piercing claims. *See, e.g.*, ULLCA (2013) § 304(b) ("The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for a debt, obligation, or other liability of the company."); *In re Packer*, Bankruptcy No. 13–41304, 2014 WL 5100095 (Bankr. E.D. Tex. Oct. 10, 2014) (noting the informality of LLC governance, recognizing that "the disregard of corporate formalities ... [is] one of the key factors in [corporate] veil-piercing determinations"; but holding that "it makes no sense to imperil the shield simply because the members do not undergo meaningless formalities such as formal meetings") (citation and internal quotation marks omitted).

¹⁰ Courts have unanimously held that piercing applies to limited liability companies. *See* ULLCA (2013) 304(b), cmt. (referring to "the equitable doctrine of 'piercing the veil'" and stating that "courts regularly (and sometimes almost reflexively) apply that doctrine to limited liability companies").

This act's association requirement creates an additional vulnerability for the internal shields. Even if a judgment debtor has can easily defeat a piercing claim, a particular item of the protected series' property might fail the association requirement and be up for grabs.

8. Traditional and Internal Shields Compared in Tabular Form

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

Structural Issues

9. Structure of the Act – A Module to be Enacted as Part of a State's Current Limited Liability Company Statute

TBA

10. Providing Default Rules for Protected Series – The Relation of a Protected Series, This Act, and a State's Limited Liability Company Statute

TBA

11. Using the Default Rules of a State's Limited Liability Statute Makes Enactment Simpler and Produces Parallelism in Concept and Terminology

Using the default rules of each state’s limited liability company statute facilitates enactment, as an enacting state need not revisit policy choices about the default rules for management structure, economic rights, information rights, etc.

This approach also produces parallelism in concept and terminology

concept	defined term pertaining to series limited liability company	defined term pertaining to a protected series
person with both governance and economic rights	member	associated member
economic rights	transferable interest (rights to distributions from the series organization)	series transferable interest (rights to distributions from a protected series)
owner of solely economic rights	transferee	series transferee
owned assets	assets of (owned by) the series organization ¹¹	assets of a protected series
		associated property/ non-associated property of a protected series ¹²

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

TBA

¹¹ Not a defined term.

¹² A protected series can own property without the property being associated with the protected series. The act labels this category of assets as “non-associated property”. Only associated property is protected by the internal shields of a protected series. *See* Sections TBA.

1 **LIMITED LIABILITY COMPANY PROTECTED SERIES ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

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

6 **Comment**

7 This name, approved by the ULC Executive Committee in January, reflects the Drafting
8 Committee’s decision to confine the act to limited liability companies. Consultation is pending
9 with the Committee on Style and the Executive Director as to how the name should reflect the
10 act’s scope as a “plug in” to other acts.

11
12 **SECTION 102. DEFINITIONS.**

13 (a) Subject to subsection (b), in this [act]:

14 (1) “Asset” means property in which a series limited liability company or
15 protected series has sufficient ownership rights for the property to be subject to enforcement by a
16 judgment creditor of the company or protected series:

17 (A) whether or not any such creditor exists;

18 (B) regardless of the priority or specific rights a judgment creditor might
19 have at any particular moment; and

20 (C) whether or not other law exempts the asset from enforcement.

21 (2) “Associated member” means a member of a series limited liability company
22 which under Section 302 is associated with a protected series of the company.

23 (3) “Associated property” means property that under Section 301 is made
24 associated property with a series limited liability company or a protected series of the company.

25 (4) “Foreign protected series” means a protected series established by a foreign
26 limited liability company and having attributes comparable to a protected series established

1 under this [act]. The term applies whether or not the law under which foreign limited liability
2 company is organized refers to “protected series”, “series”, or otherwise.

3 (5) “Foreign series limited liability company” means a foreign limited liability
4 company having at least one foreign protected series.

5 (6) “Non-associated property” means an asset of a series limited liability company
6 or protected series of the company which is not associated property of the company or protected
7 series.

8 (7) “Person” means an individual, business corporation, nonprofit corporation,
9 partnership, limited partnership, limited liability company, protected series, [general cooperative
10 association,] limited cooperative association, unincorporated nonprofit association, statutory
11 trust, business trust, common-law business trust, estate, trust, association, joint venture, public
12 corporation, government or governmental subdivision, agency, or instrumentality, or any other
13 legal or commercial entity.

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

16 (9) “Series manager” means a person that manages a protected series under the
17 operating agreement, this [act], and [the limited liability company statute].

18 (10) “Series limited liability company”, except in the phrase “foreign series
19 limited liability company”, means a limited liability company having at least one protected
20 series.

21 (11) “Series transferable interest” means a right to receive distributions from a
22 protected series.

23 (12) “Series transferee” means a person to which all or part of a series transferable

1 interest has been transferred, except that the term does not include the limited liability company
2 that established the protected series or an associated member of the protected series. The term
3 includes a member that owns a series transferable interest under Section 306(b).

4 (b) Except for the definitions in subsection (a)(4) and (5), whenever a term defined in
5 subsection (a) is used in this [act] in reference to a foreign series limited liability company or
6 foreign protected series, the term has the meaning provided by the law under which the foreign
7 company was formed or the foreign protected series was established.

8 **Legislative Note:** *Because this act is intended to be inserted into a state's current limited*
9 *liability company state, this section does not define terms already defined in the Uniform Limited*
10 *Liability Company Act (2006) (Last Amended 2013). This act presupposes the following*
11 *definitions from that act:*
12

defined term	Uniform Limited Liability Company Act (2013) Section
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)
Record	102(18)
Sign	102(21)
State	102(22)
Transferable interest	102(24)
Transferee	102(25)

13
14 *Each enacting state should determine whether its limited liability company act defines the terms*
15 *defined in this section. If a state's LLC act lacks a particular term entirely, the state should*
16 *adopt the term as defined in the Uniform Limited Liability Company Act (2013). If a state act*
17 *defines a particular concept but uses a different label – e.g., limited liability company interest*
18 *instead of transferable interest – the state should modify this act accordingly.*
19

20 **Legislative Note:** *An enacting state should amend Uniform Limited Liability Company Act*
21 *(2013) §§ 102(24) and (25) (or their respective equivalents) to include the following*
22 *exceptions:*¹³

¹³ Steve – Style replaced “should consider amending” with “should amend”. OK?

“Transferable interest”, except in the phrase “series transferable interest”, means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

“Transferee”, except in the phrase “series transferee”, means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Section 603(a)(3).

Comment

Subsection (a) – This act presupposes that the limited liability company statute of an enacting will define certain terms. See the first Legislative Note to this section.

“Asset” [1] – TBA

“Associated member” [2] – Under Section 302(a), a person must be a member of a series limited liability company in order to be an associated member of a protected series of the company. This definition reflects that requirement.

“Associated property” [3] – This definition is key to establishing and delineating the “internal shields” provided by Section 401(a). 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 the associated property of the protected series – i.e., the strict recordkeeping requirements stated in Section 301 have been complied with. See Section 402 (limiting item-by-item asset protection to associated property). The same rule applies to property owned by a series limited liability company.

“Foreign protected series” (4) – This definition is derived from the Uniform Limited Liability Company Act (2013) § 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 does not so characterize a foreign protected series. Most current statutes duck the characterization issue.

“Non-associated property” [6] – TBA

“Person” [7] – The definition of “person” in Uniform Limited Liability Company Act (2013) does not expressly include a protected series, although that definition’s catchall term – “other ... commercial entity” might apply. *See* Uniform Limited Liability Company Act (2013) § 102(15).

Subsection (b) – This subsection makes it unnecessary to specifically define the foreign analog to many of the terms defined in subsection (a).

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

(1) the company, except as otherwise provided in Section 104(c)(1);

(2) another protected series of the company;

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

(4) a series transferee, whether or not a series transferee of the protected series; and

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

Comment

Section 104(c)(1) provides that a protected series cannot exist on its own; therefore, a protected series is not entirely distinct from the limited liability company whose existence is necessary to the existence of the protected series.

SECTION 104. POWERS, PURPOSE, AND DURATION OF PROTECTED SERIES.

(a) A protected series has the capacity to sue and be sued in its own name. Except as otherwise provided in subsection (c), a protected series has the same powers that a limited liability company has under [the limited liability company statute].

(b) A protected series has the same purpose as the series limited liability company that established the protected series.

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

(1) continue to exist after the series limited liability company that established the protected series has completed its winding up;

(2) be a member of the company;

1 (3) establish a protected series;
2 (4) have rights in another protected series of the company;
3 (5) be a party to a merger, interest exchange, conversion, domestication, or
4 comparable transaction;
5 (6) except as expressly permitted by the law of this state, do anything the law of
6 this state prohibits a limited liability company from doing[.] [; or]
7 [(7)]

8 **Legislative Note:** Section 104(c)(7) is provided in case an enacting state decides that a power, a
9 purpose, or conduct acceptable for a limited liability company is not acceptable for a protected
10 series.
11

12 Comment

13

14 **Subsection (a)** – Beginning with ULPA (2001) § 105, the Uniform Law Conference has
15 eschewed listing in detail the powers of a business organization. For example, Uniform Limited
16 Liability Company Act (2013) § 109 provides: “A limited liability company has the capacity to
17 sue and be sued in its own name and the power to do all things necessary or convenient to carry
18 on its activities and affairs.”

19 *Pac Re 5-AT v. Amtrust N. Am., Inc.*, No. CV-14-131-BLG-CSO, 2015 WL 2383406, at
20 *4 (D. Mont. May 13, 2015) is distinguishable. *Pac Re* interpreted the Montana statute that
21 provided for protected cell captive insurance companies [PCC]). The decision noted that “the
22 statute does not contemplate that the assets of a protected cell will be used to satisfy the
23 liabilities of any other cell” but held that “[w]ithout a separate legal identity, and absent a
24 statutory grant to the contrary, a protected cell does not have the capacity to sue and be sued
25 independent of the larger PCC”). In contrast Section 103 expressly states that a protected series
26 is a legal person, and Section 104(a) specifically provides the capacity to sue and be sued.

27 The first sentence of this subsection is stated separately to facilitate making the capacity
28 non-waivable. See Section 107(a)(2)
29

30 **Subsection (c)(6)** – In general, a limited liability company cannot use a protected series
31 to evade a requirement of other law. This provision’s introductory language – “[e]xcept as
32 expressly permitted by the law of this state ...” – refers to situations in which state law
33 authorizes a protected series of a series limited liability company to operate under the auspices of
34 a license or other right obtained by the company in the company’s name.
35

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

2 (1) the internal affairs of a protected series of a series limited liability company;¹⁴

3 (2) the relations between a protected series and:

4 (A) the company;

5 (B) another protected series of the company;

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

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

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

9 (3) the liability of a person for a debt, obligation, or other liability of a protected series of
10 a series limited liability company if the debt, obligation, or other liability is asserted solely by
11 reason of the person being or acting as:¹⁵

12 (A) an associated member, series transferee, or series manager of the protected
13 series;

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

16 (C) a series manager that is not a series manager of the protected series; and

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

18 (E) a person managing the company; or

19 (F) a transferee of a transferable interest of to the company;

20 (4) the liability of the company for a debt, obligation, or other liability of a protected

¹⁴ The paragraph encompasses the relations among the protected series and its associated members.

¹⁵ Query – does this formulation encompass a person being in more than one of the capacities, or do we need to return to “solely by reason of being or acting one or more of the following capacities”?

1 series of the company if the debt, obligation, or other liability is asserted solely by reason of the
2 company:

3 (A) having established the protected series;

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

5 (C) having the protected series be or act as person managing the company; or

6 (D) being associated with the protected series under Section 302(b).

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

10 (A) being a protected series of the company or having as a series manager the
11 company or another protected series of the company;

12 (B) being or acting as a series manager of another protected series of the company
13 or as a person managing the company; or

14 (C) having the company be associated with the protected series under Section
15 302(b);

16 **Comment**

17 **Paragraph 1** – The reference to internal affairs both reflects and buttresses Section 103.
18 (stating that “[a] protected series is a person”).

19
20 **Paragraph 2** – The listed relationships are not within the internal affairs of a protected
21 series. Arguably, the relationships are part of the internal affairs of the series limited liability
22 company, *see* Uniform Limited Liability Company Act (2013) § 104(a) (stating that “[t]he law of
23 this state governs ... the internal affairs of a limited liability company”). This provision is
24 included for the avoidance of doubt.

25 26 **SECTION 106. RELATION OF OPERATING AGREEMENT TO THIS [ACT],** 27 **AND [LIMITED LIABILITY COMPANY STATUTE].**

28 (a) Except as otherwise provided in this section and Section 107, the operating agreement

1 of a series limited liability company governs matters concerning a protected series of the
2 company, including:¹⁶

3 (1) the activities and affairs of the protected series and the conduct of those
4 activities and affairs;

5 (2) the internal affairs of the protected series, including the rights and duties of a
6 series manager of the protected series under this [act] and [the limited liability company statute];

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

9 (4) relations between the protected series, its associated members, series
10 transferees, and series managers with a person in the person's capacity as:

11 (A) a member that is not an associated member of the protected series;¹⁷

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

13 (C) a transferee of the company.

14 (b) If the operating agreement of a series limited liability company does not provide for a
15 matter described in subsection (a), this [act] governs the matter.

16 (c) Except as otherwise provided in subsection (d), if neither the operating agreement nor
17 this [act] provides for a matter described in subsection (a), [the limited liability company statute]
18 governs the matter as follows:¹⁸

¹⁶ For comment – “matters concerning ... including” – includes relationship with the filing office.

¹⁷ This provision encompasses not only a member not an associated member of the protected series but also an associated member in a different capacity (e.g., as a member *simpliciter* or as an associated member of a different protected series).

¹⁸ A comment will note that the this “deeming up” provisions does not apply to either the operating agreement, certificate of formation, or protected series designation. A protected series does not have its own operating agreement; a limited liability company does not have anything comparable to a protected series designation.

1 (1) the protected series is deemed to be a limited liability company, organized
2 independently from the series limited liability company that established the protected series and
3 distinct from the company and any other protected series of the company;

4 (2) any associated member of the protected series is deemed to be a member of
5 the company deemed to exist under paragraph (1);

6 (3) any series transferee of the protected series is deemed to be a transferee of the
7 company deemed to exist under paragraph (1);

8 (4) any series transferable interest of the protected series is deemed to be a
9 transferable interest of the company deemed to exist under paragraph (1);

10 (5) a series manager of the protected series is deemed to be a person managing the
11 company deemed to exist under paragraph (1); and

12 (6) any asset owned by the protected series is deemed to be an asset of the
13 company deemed to exist under paragraph (1), whether or not the asset is associated property of
14 the protected series.

15 (d) Subsection (c) does not apply if its application would:

16 (1) vary the effect of a provision listed in Section 107; or

17 (2) require the [Secretary of State] to:

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

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

1 **Comment**

2 TBA

3
4 **Subsection (b)** – A protected series does not have an “operating agreement” of its own,
5 although the operating agreement of a series limited liability company may certainly have an
6 appendix or exhibit pertaining to a protected series. Unless prohibited by the operating
7 agreement, associated members of a protected series may make contracts among themselves
8 pertaining to the protected series. To the extent permitted by other law (principally the law of
9 contracts), such contracts bind the parties but have no effect on the operating agreement and the
10 rights of other members of the series limited liability company.

11
12 **SECTION 107. LIMITS ON OPERATING AGREEMENT.**

13 (a) An operating agreement may not vary:

14 (1) Section 103, pertaining to the nature of a protected series;

15 (2) the capacity under Section 104(a) of a protected series to sue and be sued in its
16 own name;

17 (3) Section 104(a) so as to provide a protected series power in addition to the
18 powers provided to a limited liability company under the [limited liability company statute];

19 (4) Section 104(a), prohibiting a protected series from engaging in specified
20 conduct;

21 (5) the law applicable under Section 105;

22 (6) this Section 107;

23 (7) Section 201(b), (c), and (d), pertaining to establishing a protected series;

24 (8) Section 202, pertaining to the name of a protected series;

25 (9) Section 203, pertaining to the registered agent of a protected series;

26 (10) Section 204, pertaining to service of process, notice, demand, or other record;

27 (11) Section 205, pertaining to information required in the [annual] [biennial]
28 report;

1 (12) Section 301, pertaining to associated property of a protected series or series
2 limited liability company;

3 (13) Section 302(a), (b), and (e), pertaining to associated members of a protected
4 series and a series limited liability company being associated with a protected series

5 (14) Section 304(b)(1), pertaining imposing liability on a protected series under
6 law other than this [act] and the [limited liability company statute];

7 (15) Section 306(a), providing that a member that is dissociated from a series
8 limited liability company ceases to be an associated member of any protected series of the
9 company;

10 (16) Section 401(c), pertaining principles governing claims to disregard a
11 limitation of liability stated in Section 401;

12 (17) Section 402, pertaining to the enforcement of claims against non-associated
13 property;

14 (18) Section 403, pertaining to the rights of a judgment creditor of an associated
15 member or series transferee;

16 (19) Section 501, pertaining to the dissolution of a protected series;

17 (20) Section 502, pertaining to winding up of a dissolved protected series, except
18 to designate a different person to manage winding up;

19 (21) [Article] 6, pertaining to foreign protected series;

20 (22) [Article] 7;

21 (23) the rights or duties under this [act] of an associated member, series
22 transferee, or series manager, except to the extent the [limited liability company statute] permits
23 the operating agreement to vary the rights or duties of a member, transferee, or person managing

1 a limited liability company;

2 (24) any requirement, procedure, or other provision of this [act] pertaining to:

3 (A) registered agents; or

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

6 (25) the rights under this [act] of a person other than a protected series, member,
7 or series manager to the prejudice of the person, except to the extent that [the limited liability
8 company statute] permits the operating agreement to vary the rights of a person not a member,
9 transferee or person managing a limited liability company.

10 (b) A limitation stated in the [limited liability company statute] concerning the power of
11 an operating agreement applies to a matter under this [act] and also as follows:

12 (1) a protected series of a series limited liability company is deemed to be a
13 limited liability company, organized independently from the series limited liability company that
14 established the protected series and distinct from the company and any other protected series of
15 the company;

16 (2) any associated member of the protected series is deemed to be a member of
17 the company deemed to exist under paragraph (1);

18 (3) any series transferee of the protected series is deemed to be a transferee of the
19 company deemed to exist under paragraph (1);

20 (4) any series transferable interest of the protected series is deemed to be a
21 transferable interest of the company deemed to exist under paragraph (1);

22 (5) a series manager of the protected series is deemed to be a person managing the
23 company deemed to exist under paragraph (1); and

(6) any asset owned by the protected series is deemed to be an asset of the company deemed to exist under paragraph (1), whether or not the asset is associated property of the protected series.¹⁹

Comment

TBA

Subsection (a) – TBA

Subsection (b) – This provision makes certain that restrictions on the powers of an operating agreement stated in an enacting state’s limited liability company statute apply not only by their terms but also to analogous situations pertaining to a protected series. For example, ULLCA (2013) § 105(c)(11) prohibits an operating agreement from imposing unreasonable restrictions on *inter alia* a member’s right to bring a claim in the right of the limited liability company (i.e., a derivative claim). Under this subsection, that prohibition applies to the right of an associated member of a protected series to bring a derivative claim pertaining to the protected series.

[ARTICLE] 2

ESTABLISHING PROTECTED SERIES

SECTION 201. PROTECTED SERIES DESIGNATION; AMENDMENT OF DESIGNATION.

(a) A limited liability company may establish a protected series with the affirmative vote or consent of all the company’s members.

(b) To establish a protected series, a limited liability company must 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 becomes effective.

¹⁹ This “deeming” provision is essentially the same as Section 106(c).

(d) A series limited liability company may amend a protected series designation by delivering to the [Secretary of State] for filing a statement of designation change 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 becomes effective.

Legislative Note: *If the limited liability company statute of an enacting state requires the certificate of formation (however denominated) to identify a person with governance authority, the same requirement should appear in subsection (b).*

Comment

The operating agreement of a series limited liability company cannot vary this section, except to change the quantum of vote or consent stated in subsection (a).

Subsection (b) – For who has the authority to sign the statement on behalf of a limited liability company, see Uniform Limited Liability Company Act (2013) § 203(a)(1) (stating that in general “a record signed by a limited liability company must be signed by a person authorized by the company”). For the possibility and effect of a delayed effective date, see Uniform Limited Liability Company Act (2013) § 207.

Subsection (c) – A protected series can be established without any associated members, associated property, or series transferees. In that circumstance, the series limited liability company will be associated with the protected series and own all the series transferable interests. See Section 302(c). *Contrast* Uniform Limited Liability Company Act (2013) § 201(d) (“A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.”)

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

The decision to file a statement of designation change involves the series limited liability company as much, if not more, than any one protected series, is largely ministerial, and is certainly within the ordinary course of business 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 [the provision of the limited liability company statute or other statute imposing name requirements on a limited liability company].

(b) The name of a protected series of a series limited liability company must [begin with] [end with] [begin or end with] [contain in one string of characters] the name of the company, including any word or abbreviation required by [the limited liability company statute] [other statute imposing name requirements on a limited liability company] to designate that the company is a limited liability company. 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.

Comment

Subsection (b) – Due to this subsection, a series limited liability company that changes its name must change accordingly the name of each of the company's protected series.

SECTION 203. REGISTERED AGENT.

(a) The registered agent in this state of a series limited liability company is the registered agent in this state for each protected series of the company.²⁰

(b) Before delivering a protected series designation to the [Secretary of State] for filing, a limited liability company shall contract with its registered agent so that the registered agent agrees to serve as the registered agent in this state for the protected series to be established.

(c) A person that signs a protected series designation delivered to the [Secretary of State] for filing affirms as a fact that the limited liability company on whose behalf the designation is delivered has complied with subsection (b).

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

²⁰ Comment will explain the mechanics and consequences of a protected series not having a registered agent.

(e) A person that ceases to be the registered agent of a protected series of a series limited liability company ceases to be the registered agent of the company and of any other protected series of the company.

Comment

Subsection (a) – The rule is different for foreign protected series registered to do business in this state. See Section 603(a), cmt.

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

Subsection (c) – This provision is derived from the Uniform Business Organizations Code § 1-209(c): “A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.”

Subsections (d) and (e) – These provisions followed inevitably from subsection (a) but are included here for the avoidance of doubt.

SECTION 204. SERVICE OF PROCESS, NOTICE, DEMAND, OR OTHER RECORD.

(a) Service of a process, notice, demand, or other record on a series limited liability company constitutes service on each protected series of the company, but this service is effective as to the company or a protected series only to the extent the record is addressed to, names, or otherwise shows that it pertains to the company or protected series.

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

Comment

Subsection (a) – Since service on a series limited liability company is service on each of the company’s protected series, it is unnecessary to provide a method of substitute service for

1 serving a protected series. Uniform Limited Liability Company Act (2013) § 119(b) provides for
2 substitute service on a limited liability company.

3 A major purpose of this provision is to facilitate service of a charging order, which, for
4 example, might be directed to “Series LLC Alpha and any protected series of Series LLC
5 Alpha.” The provision will also facilitate documents requests in discovery. Service of a record
6 on a protected series does not affect the protected series if the record is inapposite. For example,
7 serving a summons on a series limited liability company has no effect on a protected series
8 unless the summons names the protected series as a defendant. Likewise, serving a protected
9 series with a charging order pertaining to a judgment debtor has no effect if the debtor is neither
10 an associated member of the protected series nor a series transferee.

11
12 **Subsection (b)** – Due to this provision, a registered agent is not required to perform a
13 sorting function unless so provided in an agreement with the series LLC. This draft adds “or
14 other record” to the standard formulation because that latter formulation authorizes, while this
15 provision protects. The addition has the salutary side effect of clarifying that a “process, notice,
16 demand” must be in record form.

17 18 **SECTION 205. INFORMATION REQUIRED IN [ANNUAL] [BIENNIAL]**

19 **REPORT.** The [annual][biennial] report that [the limited liability company statute] requires a
20 series limited liability company to deliver to the [Secretary of State] for filing must include the
21 name of each protected series of the company.

22 ***Legislative Note:** If the law of an enacting state does not require an annual or biennial report,*
23 *this section should be omitted.*

24 25 **[ARTICLE] 3**

26 **ASSOCIATED PROPERTY; ASSOCIATED MEMBERS; SERIES TRANSFERABLE** 27 **INTEREST; GOVERNANCE; RIGHTS OF JUDGMENT CREDITOR**

28 **SECTION 301. ASSOCIATED PROPERTY.**

29 (a) Only property that is an asset of a protected series may be associated property of the
30 protected series. Only property that is an asset of a series limited liability company may be
31 associated property of the company.

32 (b) An asset of a protected series is associated property of the protected series only if a
33 record is created and maintained that identifies the protected series and:

(1) describes the asset with sufficient specificity to permit a reasonable, disinterested individual, with skills and knowledge of an ordinary business person, to identify the asset and distinguish it from:

(A) other assets of the protected series, whether or not the other assets are associated property of the protected series;

(B) assets of any other protected series of the company, whether or not the assets are associated property of the other protected series; and

(C) assets of the series limited liability company, whether or not the assets are associated property of the company;

(2) states when and for what consideration the protected series acquired the asset; and

(3) if the protected series acquired the asset from the company or another protected series of the company, states from whom the protected series acquired the asset.²¹

(c) Subject to subsections (a) and (b), a protected series may hold associated property directly or indirectly, through a representative, nominee, or otherwise, except in the name of the series limited liability company or another protected series of the company.

(d) A record required by subsection (b) concerning an asset must be available on demand to the series limited liability company and be maintained until the earlier of:²²

(1) [six] years after the date the protected series ceases to have any interest in the asset;²³ or

²¹ Query – do we want to have parallel requirements for de-acquiring assets that are associated property?

²² Comment will explain that: (i) a failure to satisfy these retention requirements does not *ipso facto* prevent an asset from being associated property or cause associated property to lose that status; but (ii) the failure may affect the asset-by-asset protections under Section 401.

²³ Comment will explain that: (i) an asset may be subdivided over time so as to be transferred bit by bit; and (ii) the six years does not begin to run until the final bit is transferred.

1 (2) the date the series limited liability company completes winding up.

2 (e) A series limited liability company may make an asset associated property of the
3 company in accordance with subsections (a) through (d).

4 **Comment**
5

6 This section states the mechanics required to make an asset associate property of a
7 protected series or series limited liability company. Section 402 states the consequence of
8 compliance *vel non*. The burden of proving whether an asset is associated property is determined
9 by other law.
10

11 **Subsection (a)** – Only property that is an asset of a protected series may be associated
12 property of the protected the series. The same rule applies to the series limited liability company
13 itself. Thus, associated property is a subset of assets (although, if the recordkeeping is
14 satisfactory, the subset will be co-extensive with the set).
15

16 **Subsection (b)** – This provision states the recordkeeping required for an asset to be
17 associated property. The question of who has access to these records depends on part on the
18 status of the person requesting access. Section 106(c) determines the information rights in
19 general of an associated member, unless the operating agreement addresses the issue. Section
20 305 determines the rights to information concerning a protected series of member that is not an
21 associated member of the protected
22

23 As to an access request by an outsider – e.g., a third party creditor searching for non-
24 associated (“up for grabs”) assets – the question is governed by other law and, in the case of a
25 foreign series limited liability company or foreign protected series, also by Article 6.²⁴
26

27 **Subsection (d)** – TBA

28 **Subsection (d)(1)** – TBA
29

30 **Subsection (e)** – This act permits a series LLC to have associated property. Doing so is
31 the simplest way to provide a horizontal shield for property owned by a series LLC.
32

33 **SECTION 302. ASSOCIATED MEMBER; ASSOCIATION OF COMPANY;**
34 **INITIAL OWNERSHIP OF SERIES TRANSFERABLE INTEREST.**

35 (a) Only a member of a series limited liability company may be an associated member of
36 a protected series of the company. A member is an associated member if the company’s

²⁴ More precise reference TBA.

1 operating agreement or a procedure established under the agreement identifies the member as an
2 associated member and states any series transferable interest owned by the member in
3 connection with becoming or being an associated member.

4 (b) A series limited liability company:

5 (1) may become associated with a protected series of the company;²⁵ and

6 (2) subject to subsections (c) and (d), is associated with the protected series when
7 the company's operating agreement or a procedure established under the agreement identifies the
8 company as being associated with the protected series and states any series transferable interest
9 owned by the company in connection with becoming or being associated.

10 (c) If a protected series of a series limited liability company has no associated members
11 when established, the company is associated with the protected series and owns all the series
12 transferable interests of the protected series.

13 (d) If a protected series of series limited liability company has had an associated member,
14 the last associated member of the protected series dissociates, and at that time the company is not
15 associated with the protected series:

16 (1) the company becomes associated with protected series; but

17 (2) receives no series transferable interest of the protected series by reason of
18 becoming associated under this subsection.

19 (e) A series limited liability company associated with a protected series is treated if as the

²⁵ Query – Subsection (e) explains the effect of a series limited liability company being “associated” with a protected series but does not define the term. Should the act instead state a definition, somewhat as follows?

“Associated”, with respect to a series limited liability company and a protected series of the company, means that the company is treated as if the company were an associated member of the company but solely with regard to matters concerning the protected series.

company were an associated member of the protected series but solely²⁶ with regard to matters concerning the protected series. The company is not treated as member for any other purpose.²⁷

Legislative Note: *If an enacting state's limited liability company statute does not permit non-economic members, the state should: (i) revise Subsection (a) as follows: "~~any~~ the series transferable interest owned by the member in connection with becoming or being an associated member"; and (ii) make a comparable change to Subsection (b)(2).*

Comment

Subsection (a) – By definition, a member cannot become associated with the series limited liability company itself, because governance and economic rights belong to the member *qua* member. Put another way: in effect, though not formally, each member of a series limited liability company is associated with the company.

The reference to “any series transferable interest” means that a member may be an associated member of a protected series without owning a series transferable interest. The reference to “a procedure established under the [operating] agreement” encompasses, for example, providing that a member becomes an associated member of a protected series when the required information is stated in the “books and records” of the series limited liability company.

Subsection (b) – TBA

Subsection (c) – In the situation addressed by this provision, the series limited liability company becomes associated by operation of law – i.e., automatically. However, best practices would be to document the association in the operating agreement or an appropriate exhibit, appendix, or other record.

If subsequently one or more members become associated with the protected series, “the ... operating agreement or a procedure established under the agreement” identifying “any series transferable interest owned by the ... member in connection with becoming or being an associated member” should take into account what is to happen to the series transferable interest owned by the series limited liability company.

Subsection (d) - TBA

SECTION 303. DUTIES OF SERIES MANAGERS LIMITED. A series manager

does not in that capacity owe any duty to:

²⁶ Queries – (1) Are “solely” (in the first sentence) redundant of the second sentence (“The company is not treated as member for any other purpose.”)? (2) If so, which language should remain?

²⁷ For comment – For example, being associated with a protected series does not entitle a series limited liability company to vote on a proposed amendment the operating.

(1) the series limited liability company that established the protected series or the members of the company in their capacity as members; or

(2) another protected series of the company or any associated members of the other protected series in their capacity as associated members of the protected series.²⁸

Legislative Note: TBA – providing alternative language for an enacting state whose limited liability company statute provides no default rule on management of a limited liability company or makes manager management the default rule.

Comment

This act does not provide a default rule for how a protected series is managed. If the operating agreement does not address the issue, Section 106(c) applies the default rule from the limited liability company statute, which under almost all limited liability company statutes is member management. If a protected series has no associated members, under Section 302(c) and (d) the series limited liability company is treated as if the company were an associated member.

SECTION 304. NO AGENCY POWER OF ASSOCIATED MEMBER; NO CHANGE TO ASSOCIATED MEMBER’S RIGHT TO CONSENT OR VOTE ON AMENDMENT TO OPERATING AGREEMENT.

(a) A member of a series limited liability company is not an agent of a protected series solely by reason of being an associated member of the protected series.

(b) A person’s status as associated member of a protected series of a series limited liability company does not:

(1) prevent or restrict law other than this [act] and the [limited liability company statute] from imposing liability on the protected series because of the person’s conduct; or

(2) change the member’s right to consent to or vote on an amendment to the company’s operating agreement, even if the amendment in whole or in part concerns the

²⁸ A comment will address the *Sinven/Nemec* issue.

protected series

Comment

Subsection (a) – This subsection is derived essentially verbatim from Uniform Limited Liability Company Act (2013) § 301.

Subsection (b) – TBA

SECTION 305. RIGHTS OF MEMBER THAT IS NOT ASSOCIATED MEMBER TO INFORMATION CONCERNING PROTECTED SERIES.²⁹

(a) A member that is not an associated member of a protected series has a right to information concerning the protected series to the same extent the member has a right to information concerning the activities and affairs of the series limited liability company.

(b) Solely for the purpose of subsection (a), the activities and affairs of a protected series of a series limited liability company are considered to be part of the activities and affairs of the company.

SECTION 306. CEASING TO BE ASSOCIATED MEMBER.

(a) If a member of a series limited liability company is dissociated from the company, the dissociated member ceases to an associated member of any protected series of the company.

(b) If a person ceases to be associated member of a protected series, any series transferable interest owned by the person as an associated member immediately before the cessation is owned by the person solely as a series transferee.

(c) A person's ceasing to be an associated member of a protected series of a series limited liability company does not of itself:

²⁹ For comment – As for the information rights of an associated member or a person formally an associated member – either the operating agreement will address the matter or Section 106(c) will provide the rules by extrapolation.

1 (1) change the person’s status as a member of the company or as an associated
2 member of another protected series of the company; or

3 (2) discharge the person from any debt, obligation, or other liability to the
4 protected series or to another associated member of the protected series which the person
5 incurred while an associated member of the protected series.

6 **Comment**

7
8 The operating agreement of a series limited liability company may not vary
9 subsection (a) but may provide additional circumstances in which a person will cease to be an
10 associated member of a protected series.

11
12 **Subsection (b)** – This subsection is derived from the Uniform Limited Liability
13 Company Act (2013) § 603(3). Subject to the operating agreement, Section (107) (extrapolation)
14 would produce the same rule. The rule is stated here to make possible the second sentence of the
15 definition of “series transferable interest.” See Section 102(a)(12) (“The term includes a person
16 that owns a transferable interest under Section 306(b).”

17
18 **[ARTICLE] 4**

19 **LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIM**

20 **SECTION 401. LIMITATIONS ON LIABILITY.**

21 (a) Subject to subsection (b):

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

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

26 (3) a series limited liability company is not liable, directly or indirectly, by way of
27 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the
28 company solely by reason of the company:

29 (A) having established the protected series;

1 (B) being associated with the protected series;

2 (C) being or acting as a series manager of the protected series;

3 (D) having the protected series manage the company;

4 (4) a protected series is not liable, directly or indirectly, by way of contribution or

5 otherwise, for a debt, obligation, or other liability of the series limited liability company or

6 another protected series solely by reason of:

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

8 (B) the company being associated with the protected series under Section

9 302; or

10 (C) having as a series manager the company or another protected series of

11 the company; or

12 (B) being or acting as a manager of the company or a series manager of

13 another protected series of the company;

14 (5) a series limited liability company is not liable, directly or indirectly, by way of

15 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the

16 company solely by reason of the company being associated with the protected series or acting in

17 that capacity; and

18 (6) a person is not liable, directly or indirectly, by way of contribution or

19 otherwise, for a debt, obligation, or other liability of a series limited liability company or a

20 protected series of the company solely by reason of being or acting as an associated member of

21 the protected series, a series manager of the protected series, a member of the company, or a

22 person managing the company;

23 (b) A claim to disregard a limitation stated in subsection (a) is governed by the principles

1 of law and equity that would apply if each protected series were a limited liability company,
2 including principles providing rights to creditors or holding one person liable for the debt,
3 obligation, or other liability of another person.³⁰

4 **Comment**

5 **Subsection (a)(1)-(5)** – These provisions establish the “horizontal” shields which are the
6 defining characteristic of a series limited liability company. See Prefatory Note, Part 1.
7

8 **Subsection (a)(6)** – This subsection establishes the traditional vertical shield with regard
9 to protected series and is based on Uniform Limited Liability Company Act (2103) § 304(a).
10 The subsection also provides a shield for members from “a debt, obligation, or other liability of a
11 series limited liability company,” which is redundant of a limited liability company’s traditional,
12 vertical shield. The redundancy is intended to preclude any argument that the traditional, vertical
13 liability shield of a limited liability company is somehow affected when the company establishes
14 one or more protected series.
15

16 **Subsection (b)** – This subsection encompasses outside reverse piercing claims (to the
17 extent a state allows such claims) but by its terms does not address inside reverse piercing
18 claims. A successful inside reverse pierce does not disregard a liability shield but rather permits
19 an entity’s owner to enjoy and exercise a right belonging to the entity.

20 This subsection’s specific references to particular categories of “principles of law or
21 equity” should not be interpreted as limiting the effect of Uniform Limited Liability Company
22 Act (2013) § 111 (stating that “[u]nless displaced by particular provisions of this [act], the
23 principles of law and equity supplement this [act]”) (brackets in original).
24

25 **SECTION 402. CLAIM AGAINST NON-ASSOCIATED PROPERTY**

26 (a) For the purposes of this section, a claimant first seeks enforcement of a claim against
27 an asset when the claimant first serves process on the owner of the asset, seeking enforcement of

³⁰ Query – Should ULLCA (2013) § 304(b) Apply to the Horizontal Shields? To Vertical Shields?

- a. Section 304(b) provides that disregard of governance formalities is not a ground for piercing the traditional vertical shield. If that provision is to apply to the horizontal shields of a series limited liability company, this act must so state – “extension” does not apply to rights of third parties – but make an exception for failure follow the recordkeeping requirements of Section 301. That is, general disregard of Section 301 requirements would be a ground for horizontal piercing. In any event, Section 304(b) is irrelevant to Section 401.
- b. Should Section 304(b) apply w/r/t the vertical shield protecting associated members of a protected series from status liability for obligations of the protected series?

1 the claim against the asset by attachment, levy, or the like.³¹

2 (b) Subject to subsection (c), the following rules apply:

3 (1) A claim against a series limited liability company may be enforced against an
4 asset of a protected series of the company only if:

5 (A) when enforcement is sought, the asset is non-associated property of
6 the protected series; or

7 (B) when the liability giving rise to the claim was incurred, the protected
8 series owned the asset but the asset was non-associated property of the protected series.

9 (2) A claim against a protected series of a series limited liability company may be
10 enforced against an asset of the company only if:

11 (A) when enforcement is sought, the asset is non-associated property of
12 the company; or

13 (B) when the liability giving rise to the claim was incurred, the company
14 owned the asset but the asset was non-associated property of the company.

15 (3) A claim against a protected series of series limited liability company may be
16 enforced against an asset of another protected series of the company only if:

17 (A) when enforcement is sought, the asset is non-associated property of
18 the other protected series; or

19 (B) when the liability giving rise to the claim was incurred, the other
20 protected series owned the asset but the asset was non-associated property of the other protected

³¹ The phrase “attachment, levy or the like” comes from the definition of “lien creditor” in UCC § 9-102(a)(52). Comment will indicate that (i) under this act, it is not necessary for the claim to have been reduced to judgment in order to invoke this section; and (ii) local law will determine the extent to which pre-judgment attachment is available.

1 series.

2 (c) This section supplements and does not displace the principles of law and equity
3 concerning:

4 (1) a fraudulent or voidable conveyance, transfer, or transaction;

5 (2) a lien, mortgage, or security interest; or

6 (3) the determination of ownership of property.

7 **Comment**

8
9 This section creates a novel, important protection for creditors and a novel, important
10 inducement for good recordkeeping.

11
12 However, this section is moot to the extent a piercing claim succeeds against a horizontal
13 shield. For example, suppose that, as a result of a piercing claim, a series limited liability
14 company is adjudged liable for a debt of a protected series of the company. The association *vel*
15 *non* of the company's assets is immaterial to the judgment debtor. The judgment debtor will be
16 enforcing a judgment against the company itself; naturally all the company's assets are subject to
17 enforcement.

18
19 **Subsection (c)** – This subsection's specific references to particular categories of
20 "principles of law or equity" should not be interpreted as limiting the effect of Uniform Limited
21 Liability Company Act (2013) § 111 (stating that "[u]nless displaced by particular provisions of
22 this [act], the principles of law and equity supplement this [act]") (brackets in original).

23
24 **SECTION 403. RIGHTS OF JUDGMENT CREDITOR.** If [the limited liability
25 company statute] provides or restricts remedies available to a judgment creditor of a member of a
26 limited liability company or an owner of a transferable interest of the company, the same
27 remedies and restrictions apply to a judgment creditor of:

28 (1) an associated member or series transferee of a protected series of the company; or

29 (2) the company, to the extent that it has rights in a protected series of the company.

1 [ARTICLE 5]

2 DISSOLUTION AND WINDING UP OF PROTECTED SERIES

3 SECTION 501. DISSOLUTION OF PROTECTED SERIES. A protected series of a
4 series limited liability company is dissolved, and its activities and affairs must be wound up:

5 (1) when the company dissolves;

6 (2) as provided in the company's operating agreement; or

7 (3) upon the entry by [the appropriate court] of an order dissolving the protected series:

8 (A) on application by a member of the company on the grounds that the conduct
9 of all or substantially all of the activities and affairs of the protected series is unlawful;³² or

10 (B) on application by an associated member of the protected series on the grounds
11 that:

12 (i) it is not reasonably practicable to carry on the activities and affairs of
13 the protected series in conformity with the operating agreement; or

14 (ii) the series manager or members in control of the protected series:

15 (I) have acted, are acting, or will act in a manner that is illegal or
16 fraudulent; or

17 (II) have acted or are acting in a manner that is oppressive and was,
18 is, or will be directly harmful to the applicant.

19 Note to Drafting Committee

20
21 Paragraph (3) is included because extrapolation may well be ineffective to establish what
22 is not merely a claim but also jurisdiction to determine the claim.
23

³² “unlawful” here; a few lines further down “illegal” – the language comes straight from the harmonization project.

1 **Comment**

2
3 **Paragraph (3)** – This paragraph is derived from Uniform Limited Liability Company Act
4 (2013) § 701(a)(4).
5

6 **Paragraph (3)(A)** – In the case of illegality, any member of a series limited liability
7 company has reason to worry. Accordingly, a member has standing under this provision
8 regardless of whether an associated member of the protected series.
9

10 **Paragraph (3)(B)(II)** – This provision refers to “members in control” rather than
11 “associated members in control” because a member that is not an associated member of a
12 protected series might nonetheless have control over the protected series.
13

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

15 (a) A dissolved protected series of a series limited liability company shall wind up its
16 activities and affairs and continues after dissolution only for the purpose of winding up. The
17 series manager of the protected series shall manage the winding up. If the series manager
18 declines or fails to manage the winding up or there is no series manager, the series limited
19 liability company shall manage the winding up.

20 (b) [The appropriate court] may order judicial supervision of the winding up of a
21 dissolved protected series of a series limited liability company, including the appointment of a
22 person to wind up the activities and affairs of the protected series:

23 (1) on the application of the company, an associated member of the protected
24 series, or, if the protected series has no associated members, by a member of the series limited
25 liability company that established the protected series, if the applicant establishes good cause; or

26 (2) in connection with a proceeding under Section 501(3).

27 (c) When a protected series of a series limited liability company has completed winding
28 up, the company may deliver to the [Secretary of State] for filing a statement of designation

cancellation stating the name of the protected series and that the protected series is terminated.³³

(d) Winding up each of its protected series is part of the winding up of a series limited liability company. A series limited liability company does not complete winding up until each of its protected series has completed winding up.³⁴

Comment

For the most part, Section 106(c) provides default rules for winding up, including, e.g., limiting post-dissolution activities and affairs to winding up, delineating mandatory and permissible winding up activities.

[ARTICLE] 6

FOREIGN PROTECTED SERIES

SECTION 601. GOVERNING LAW.

(a) The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) the internal affairs of a foreign protected series of the company;

(2) relations between the protected series and:

(A) the company;

(B) another protected series of the company;

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

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

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

³³ Query – should this statement to serve as constructive notice?

³⁴ This provision affects an enacting state's limited liability company statute, but only to the extent of treating the winding up of protected series as part of the winding up of the series limited liability company.

1 (3) subject to subsection (b) and Sections 602 and 604:

2 (A) the liability of a person for a debt, obligation, or other liability of a
3 foreign protected series of a foreign series limited liability company if the debt, obligation, or
4 other liability is asserted solely by reason of the person being:³⁵

5 (i) an associated member, series transferee, or series manager of
6 the protected series;

7 (ii) a member of the company not that is not an associated member
8 of the protected series;

9 (iii) a series transferee of pertaining a different protected series of
10 the company;

11 (iv) a series manager of a different protected series of the
12 company;

13 (v) a person managing the company; or

14 (vi) a transferee of a transferable interest of the company;

15 (B) the liability of the company for a debt, obligation, or other liability of
16 a protected series of the company if the debt, obligation, or other liability is asserted solely by
17 reason of the company:

18 (i) having established the protected series;

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

20 (iii) having the protected series manage the company;

21 (C) the liability of a foreign protected series of the company for a debt,

³⁵ Query – does this formulation encompass a person being in more than one of the capacities, or is it necessary to return to the phrase “solely by reason of being in one or more of the following capacities” (used in an earlier draft).

1 obligation, or other liability of the company or another protected series of the company if the
2 debt, obligation, or other liability is asserted solely by reason of the protected series:

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

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

7 (b) In determining a claim under subsection (a)(3), a court may apply the law of this state
8 instead of the law of the foreign jurisdiction of a foreign series limited liability company if the
9 court determines that applying the law of the foreign jurisdiction would materially prejudice the
10 claimant so as to substantially conflict with the public policy of this state.³⁶ In making the
11 determination, the court shall consider:

12 (1) the extent to which the law of the foreign jurisdiction prejudices a claimant³⁷
13 when compared with law of this state;

14 (2) whether the claimant is a resident of this state or for another reason might
15 reasonably expect the law of this state to apply;

16 (3) to what extent the claim arose in this state; and

17 (4) any rule of law of this state concerning choice of law which the court

³⁶ This provision does not allow a court to choose domestic law if the law of the foreign jurisdiction is more pro-claimant than the law of the forum state. The provision's approach is the inverse of Delaware's approach to importing statutes of limitations. *See* Del. Code Ann., tit. 10, § 8121 ("Where a cause of action arises outside of this State, an action cannot be brought in a court of this State to enforce such cause of action after the expiration of whichever is shorter, the time limited by the law of this State, or the time limited by the law of the state or country where the cause of action arose, for bringing an action upon such cause of action...").

³⁷ Query – do we need to list all the possibly relevant types of defendants – i.e., foreign series LLC, foreign protected series, associated member of a foreign protected series, etc.?

1 considers relevant.³⁸

2 **Comment**

3 **Subsection (a)(3)** – Each of the subparagraphs in paragraph (3) is subject to three very
4 important exceptions. TBA

5
6 **Subsection (a)(3)(A)** – This provision parallels Section 105(3) and, subject to the above
7 noted exceptions, states the choice of law rule applicable to matters pertaining to the traditional
8 shield, as that shield pertains to persons *vis-à-vis* a foreign protected series. The choice of law
9 rule *vis-à-vis* a foreign limited liability company appears in the main body of a state’s limited
10 liability company statute. *See, e.g.*, Uniform Limited Liability Company Act (2013) § 901(a).

11
12 **Subsection (a)(4)(B) and (C)** – These provisions parallel respectively Section 104(4)
13 and (5) and, subject to the above noted exceptions, state the choice of law rule for the horizontal
14 shields within a foreign series limited liability company.

15
16 **Subsection (b)** – This subsection addresses the TBA problem.
17 This subsection does not allow a court to choose domestic law if the law of the foreign
18 jurisdiction is more pro-claimant than the law of the forum state. The subsection’s approach is
19 the inverse of Delaware’s approach to importing statutes of limitations. *See* Del. Code Ann., tit.
20 10, § 8121 (“Where a cause of action arises outside of this State, an action cannot be brought in a
21 court of this State to enforce such cause of action after the expiration of whichever is shorter, the
22 time limited by the law of this State, or the time limited by the law of the state or country where
23 the cause of action arose, for bringing an action upon such cause of action....”).

24 25 **SECTION 602. APPLICATION OF THIS [ACT] TO FOREIGN LIMITED** 26 **LIABILITY COMPANY AND FOREIGN PROTECTED SERIES.**

27 (a) Sections 301 and 402 apply to any property located in this state and owned by a
28 foreign series limited liability company or foreign protected series subject to the personal
29 jurisdiction of the courts of this state.

30 (b) Section 401(c) applies to a foreign series limited liability company or foreign
31 protected series subject to the personal jurisdiction of the courts of this state.

32 (c) Solely to apply subsections (a) and (b), the following rules apply:

³⁸ This formulation seeks to address what in Tucson we referred to “the Nevada problem.” This formulation makes it unnecessary to provide in particular that the courts of an enacting state apply the “as if separate LLCs” rule.

1 (1) If a foreign series limited liability company is subject to the personal
2 jurisdiction of the courts of this state, each foreign protected series of the company is subject to
3 the personal jurisdiction of the courts of this state.

4 (2) If a foreign protected series of a foreign series limited liability company is
5 subject to the personal jurisdiction of the courts of this state, the company and each other foreign
6 protected series of the company are subject to the personal jurisdiction of the courts of this state.

7 **Comment**

8
9 **Subsections (a) and (b)** – By their terms these subsections are not limited to cases
10 brought in the courts of an enacting state. However, except in extraordinary circumstances,
11 subsection (b) will not be applied by the courts of the jurisdiction of formation of the foreign
12 series limited liability company. Subsection (b) might influence a court of a foreign jurisdiction
13 that is not the jurisdiction of formation of the foreign series limited liability company as that
14 court applies the law of its jurisdiction to determine the choice of law issue.

15
16 At least in theory, subsection (a) is more likely than subsection (b) to be applied by a court of a
17 foreign jurisdiction, because such a court might recognize an analogy to an action *quasi in rem*,
18 See ACTION, Black's Law Dictionary (10th ed. 2014) (describing such an action as “[a]n action
19 brought against the defendant personally, with jurisdiction based on an interest in property, the
20 objective being to deal with the particular property or to subject the property to the discharge of
21 the claims asserted”). In such an action, the location of the property justifies personal
22 jurisdiction. In this context, the location might influence choice of law.

23
24 **Subsection (c)** – This provision is necessary to make subsections (a) and (b) workable
25 and should satisfy due process requirements for “long arm” provisions.

26 **SECTION 603. TRANSACTING BUSINESS IN THIS STATE; FOREIGN** 27 28 **REGISTRATION OF PROTECTED SERIES; PERSONAL JURISDICTION.**

29 (a) Subject to subsections (b), (c), and (d), the law of this state governing the registration
30 of a foreign limited liability company to do business in this state applies to a foreign protected
31 series as if the foreign protected series were a foreign limited liability company.

32 (b) An application for registration under subsection (a) must include:

33 (1) the name and jurisdiction of formation of the foreign series limited liability

1 company that established the foreign protected series applying for registration; and

2 (2) the name, street, mailing, and electronic mail address of {an individual who}
3 {a person that} knows the name of any other foreign protected series of the company and the
4 name, street, mailing, and electronic mail address of an agent for service of process in the
5 company's jurisdiction of formation for each other protected series of the company.

6 (c) The name of the foreign protected series applying for registration or registered under
7 subsection (a) must comply with Section 202. A foreign protected series may comply with
8 Section 202 pursuant to [fictitious name statute].³⁹

9 (d) The requirement in [the limited liability company statute] to amend a statement of
10 registration to update information applies to the information required by subsection (b).

11 (e) Except as otherwise provided in Section 602(b), the following rules apply to
12 determine whether a foreign limited liability company or foreign protected series of the company
13 has transacted business in this state or is subject to the jurisdiction of the courts of this state:

14 (1) The activities of the company are not attributable to a protected series of the
15 company solely by reason of the company having established the protected series.

16 (2) The activities of a protected series of the company are not attributable to the
17 company or another protected series of the company solely by reason of the company having
18 established the protected series or the other protected series.

19 **Legislative Note:** *Although business entity statutes typically do not provide a delayed effective*
20 *date for foreign entities, an enacting state whose limited liability company statute has previously*
21 *contemplated protected series should consider delaying the effective date of subsection (a)(2). In*
22 *such states, subsection (a)(2) imposes a significant new requirement on foreign protected series.*

23
24 **Legislative Note:** *If the law of an enacting state requires that a foreign limited liability*
25 *company's application to register include a statement of good standing pertaining to the*

³⁹ Section 106 does not apply to a foreign series limited liability company or foreign protected series.

1 *company: (i) subsection (a) should be revised to add two additional paragraphs to subsection*
2 *(b), as shown below; (ii) a new subsection (c) should be added, as follows; and (iii) the*
3 *remaining subsections should be re-lettered accordingly:*

4
5 *(b) An application for registration under subsection must include:*

6 *(3) a statement of good standing pertaining to the company; and*

7 *(4) subject to subsection (b), a statement of good standing pertaining to the*
8 *applicant; and*

9
10 *(c) If the law of the jurisdiction of formation of a foreign series limited liability company*
11 *does not provide for a statement of good standing pertaining to a foreign protected*
12 *series, the application for registration must include:*

13 *(1) an affirmation of that fact by an individual on behalf of the applicant; and*

14 *(2) a statement of good standing pertaining to the foreign series limited liability*
15 *company.*

16 **Comment**

17
18 **Subsection (a)** – Among the provisions made applicable by this subsection is the “no
19 greater powers” rule of Uniform Limited Liability Company Act (2013) § 901(c) (“Registration
20 of a foreign limited liability company to do business in this state does not authorize the foreign
21 company to engage in any activities and affairs or exercise any power that a limited liability
22 company may not engage in or exercise in this state.”).

23
24 This subsection does not require that all registrants that are protected series of a foreign series
25 limited liability company have the same agent for service of process. *Contrast* Section 203(a)
26 (providing that the registered agent of a series limited liability company is the registered agent
27 for each protected series established by company).

28
29 This subsection is not redundant of Section 106(c) (the extrapolation provision), because Section
30 106(c) applies only to domestic protected series.

31
32 **Subsection (a)(1)** – The information required here is the information required under
33 Section 604(a) (transparency requirement).

34
35 **Subsection (a)(2)** – Section 202 requires that the name of a protected series either begin
36 or end with the name of the series limited liability company. Under the first part of
37 subsection(a), a foreign protected series may use Uniform Limited Liability Company Act
38 (2013) § 906 (noncomplying name of foreign limited liability company) to comply with this
39 name requirement. If a foreign series limited liability company changes its name, the company
40 will have to change the name used in an enacting state by any of the company’s protected series
41 registered in that state.

1 **SECTION 604. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED**
2 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES SUBJECT TO**
3 **PROCEEDING.**

4 (a) Within TBD days of becoming a party to a proceeding before a civil, criminal,
5 administrative, or other adjudicative tribunal of this [state] or the United States:

6 (1) a foreign series limited liability company shall disclose to each other party to
7 the proceeding the name, street, mailing, and electronic mail address of:

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

9 (B) each series manager of and an agent for service of process for each
10 protected series of the company; and

11 (2) a foreign protected series shall disclose to each other party to the proceeding
12 the name, street, mailing, and email address of:

13 (A) the foreign series limited liability company that established the
14 protected series, each person managing the company, and an agent for service of process for the
15 company;⁴⁰ and

16 (B) each other protected series of the company, each series manager of
17 each other protected series and an agent for service of process for each other protected series.

18 (b) A tribunal conducting a proceeding {within} {under} {contemplated by} subsection
19 (a) shall enforce the disclosure obligations stated in subsection (a) in accordance with the
20 tribunal's rules for disclosure and discovery of information.

⁴⁰ Query – restrict agent to “in this state or the company’s jurisdiction of formation”?

1 [ARTICLE] 7

2 MISCELLANEOUS PROVISIONS

3 SECTION 701. 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 702. 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 Comment

13
14 This section responds to specific language of the Electronic Signatures in Global and
15 National Commerce Act and is designed to avoid preemption of state law under that federal
16 legislation.

17
18 SECTION 703. APPLICATION TO EXISTING RELATIONSHIPS.

19 Details TBD. As of October 14, 2015:

- 20 • long drag-in period – 2 years
- 21 • authorize an existing series LLC to opt in before the drag-in date
- 22 • authorize those with managerial authority to comply with this act’s recordkeeping
- 23 and filing requirements without need for member approval (domestic only)

24 Comment

25
26 Article 5 of this act contains novel provisions affecting the internal shields of foreign
27 protected series. See the Legislative Note to Section 604.

1 **SECTION 704. SAVINGS CLAUSE.** This [act] does not affect an action commenced,
2 proceeding brought, or right accrued before [the effective date of this [act]].

3 **[SECTION 705. SEVERABILITY CLAUSE.** If any provision of this [act] or its
4 application to any person or circumstance is held invalid, the invalidity does not affect other
5 provisions or applications of this [act] which can be given effect without the invalid provision or
6 application, and to this end the provisions of this [act] are severable.]

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

9 **SECTION 706. REPEALS; CONFORMING AMENDMENT.**

10 (a) ...

11 (b) ...

12 (c) ...

13 **SECTION 707. EFFECTIVE DATE.** This [act] takes effect