

## Section 601(b) Redux Revisited

dsk-11-11-16

### Alternative Proffered by the Reporter

*Please review for policy, not language. Reporter is working on breaking up subsection(b) without contravening the Style rule re: placement of lists.*

1 (b) If a party to a non-criminal proceeding in a court of this state or a court of the United  
2 States located in this state seeks to have the court restrict the application of or disregard  
3 subsection (a)(4),<sup>1</sup> the court may apply the principles of law and equity of this state to the issue  
4 instead of the principles of law and equity of the jurisdiction of formation of the foreign series  
5 limited liability company or establishment of the foreign protected series, if the court determines  
6 that, in the circumstances relevant to the proceeding, applying the principles of law and equity of  
7 the foreign jurisdiction would produce a result in the proceeding repugnant to a strong public  
8 policy of this state.

9 (c) In making a determination under subsection (b), the court:

10 (1) shall consider:

11 (A) the specificity, clarity, and forcefulness with which the law of this  
12 state reflects the strong public policy; and

13 (B) whether the party is a resident of this state<sup>2</sup> or for another reason might  
14 reasonably expect the law of this state to apply to the issue; and

15 (2) shall not consider any difference between [cite to the limited liability company  
16 statute, including this act] and the law of the jurisdiction under which the foreign series limited

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<sup>1</sup> Comment will explain that this subsection does not permit restricting or disregarding the (a)(4) shields solely due to existence of the relationships covered by (a)(4).

<sup>2</sup> Query – domicile, citizen, and what to do with entities?

17 liability company is formed or foreign protected series established,<sup>3</sup> except to the extent the  
18 difference would substantially contribute to producing a result in the proceeding repugnant to the  
19 public policy of this state.

### Commissioner McBride Alternative

20 The same as the above language, except for adding two preconditions:

21 ) the party is a resident of this state;<sup>4</sup>

22 ) the claim with regard to which the party seeks to have the tribunal restrict the  
23 application of or disregard subsection (a)(4)<sup>5</sup> arose in this state<sup>6</sup> and is governed by  
24 the law of this state

25 and deleting as redundant paragraph (1)(B) (in making determination, court to consider “whether  
26 the party is a resident of this state or for another reason might reasonably expect the law of this  
27 state to apply to the issue”.

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<sup>3</sup> Contrast UBOC § 1-102(32) ““Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.”

<sup>4</sup> Query – domicile, citizen, and what to do with entities?

<sup>5</sup> Necessary because some states look at piercing, etc. as a claim and others as a remedy.

<sup>6</sup> Where are claim arises can raise a very complicated question of law.