

D R A F T

FOR DISCUSSION ONLY

# **LIMITED LIABILITY COMPANY PROTECTED SERIES ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR  
STOWE, VERMONT  
JULY 8 - JULY 14, 2016

# **LIMITED LIABILITY COMPANY PROTECTED SERIES ACT**

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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June 7, 2016

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# LIMITED LIABILITY COMPANY PROTECTED SERIES ACT

## Prefatory Note – Preliminary

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

### *Conceptual Issues*

1. The Protected Series Construct
2. “Protected Series” as the Term of Art
3. The Import of the Protected Series Construct
4. Growing Popularity of Series Limited Liability Companies
5. The Two-Fold Nature of the Internal Shields: Non-Liability and Non-Recourse Rules
6. Non-Liability and Non-Recourse Rules: Contrasting the Traditional Corporate/LLC Liability Shield with the Internal Shield of a Protected Series
7. Overcoming the Shield
8. Traditional and Internal Shields Compared in Tabular Form

### *Structural Issues*

9. Structure of the Act – A Module to be Enacted as Part of a State’s Existing Limited Liability Company Statute
10. Extrapolation – Providing Default Rules at the Protected Series Level
11. Using the Default Rules of a Jurisdiction’s Limited Liability Statute Makes Enactment Simpler and Produces Parallelism in Concept and Terminology

### *The Act Compared to Existing Law*

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

### *Conceptual Issues*

#### 1. The Protected Series Construct

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

---

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

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

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

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

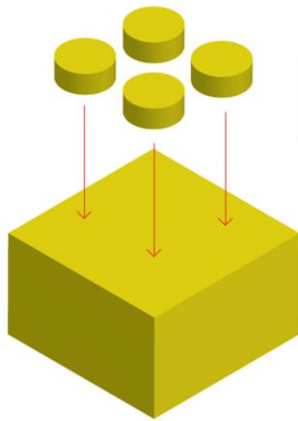
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14, § 3967 (2011).

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

<sup>3</sup> 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.

<sup>4</sup> Allowing a non-member of a series limited liability company to be associated with a protected series of the company would cause daunting complexity while producing very little (if any) benefit.



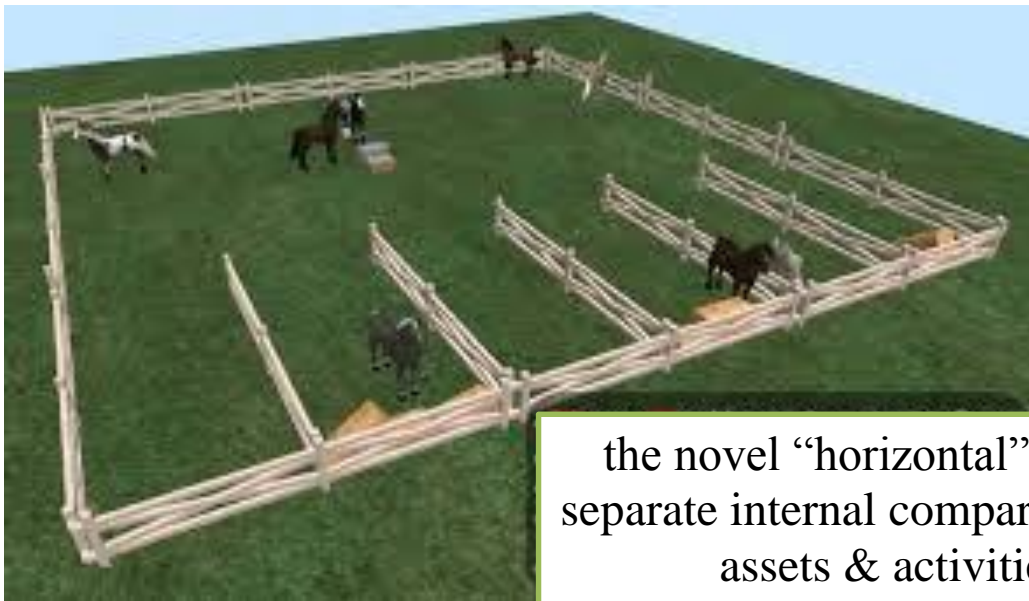
the owners

**the traditional  
“vertical”  
shield**



the entity

claims of status liability



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



## 2. “Protected Series” as the Term of Art

Following long-standing practice with statutory trusts and investment companies, existing protected series statutes use “series” as the term of art for the construct just described. However, outside the investment trust context, using “series” can be quite confusing. “Series” has an established and very different meaning with regard to bonds, corporate stock, etc.<sup>5</sup> To avoid confusion, this act uses the term “protected series” – to signal the different meaning and to call attention to the internal, horizontal shields which are the construct’s defining characteristic.

## 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 person existing *within* an overarching entity;
- establishes a new type of liability shield, the “internal 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 creditors of the series limited liability company and of any other protected series of the series limited liability company.

## 4. Growing Popularity of Series Limited Liability Companies

It is not possible to determine the number of series limited liability companies and protected series in existence in the United States. Under most protected series provisions, a limited liability company can establish a protected series without making a public filing. The only item on the public record will be a statement that the company has the capacity to establish protected series. However, anecdotal evidence suggests heavy usage, especially under the Delaware statute.<sup>6</sup>

Better data is available from Illinois, where the law requires a public filing to establish a protected series. As of January 26, 2016, more than 26,000 protected series were active under Illinois law.

---

<sup>5</sup> For example, lists of limited liability company statutes with “series” provisions often include the statutes of Minnesota, North Dakota, and Wisconsin. Although these acts do refer to “series,” the word has nothing to do with asset partitioning and internal shields. The three acts use “series” to describe a category of ownership interest analogous to a series of stock. See Minn. Stat. § 322B.03, subd. 44; ND Stat. § 10-32.1-02(48); Wis. Stat. § 183.0504.

<sup>6</sup> An ABA advisor to the Drafting Committee reports having established between 1000 to 1500 protected series under Delaware law.

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

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

5  
6 Several other jurisdictions are reported as very interested in providing for protected series and  
7 awaiting the conclusion of this project.  
8

9 Although the widespread use and growing popularity of protected series is undeniable, the  
10 reasons for this use and popularity are not well understood. For the most part, the legal and  
11 business relationships established through protected series can also be established with various  
12 structures involving several limited liability companies.  
13

14 Some situations have been identified in which protected series provide a unique benefit, but  
15 these situations involve very specialized types of arrangements and cannot account for  
16 widespread use and popularity. Some proponents note the potential convenience for regulatory  
17 purposes: A series limited liability company holds a single license or makes one regulatory  
18 filing, and various protected series of the company function under the aegis of that license or  
19 filing.<sup>7</sup>  
20

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

26 Also not in doubt is that current statutes leave many very practical questions unanswered and,  
27 moreover, lack important safeguards to protect the public, in general, and creditors, in particular.  
28

---

<sup>7</sup> This benefit is all-important in the context of investment funds.

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

3  
4 Like the traditional “vertical shield,” a protected series’ horizontal shield has two separate but  
5 related aspects:

- 6  
7        • the non-liability rule  
8                ○ a protected series is not liable for the debts of the series limited liability company  
9                or any other protected series of the company and *vice versa*  
10  
11        • the non-recourse rule  
12                ○ each *associated* asset of a protected series is shielded against collection efforts of  
13                judgment creditors of the series limited liability company or of any other  
14                protected series of the company;  
15                ○ *association* is accomplished by creating and maintaining required records<sup>8</sup>  
16

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

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

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

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

38                EXAMPLE: Conference, LLC, a series limited liability company, has two  
39                protected series, Conference, LLC – Protected Series Alpha (“Alpha”) and  
40                Conference, LLC – Protected Series Beta (“Beta”). Each protected series owns  
41                assets, and each asset is an associated asset of the protected series that owns the  
42                asset. A judgment creditor of Alpha attempts to levy on an associated asset of  
43                Beta. The attempt will fail for two reasons: (i) the attempt is an effort to hold  
44                Beta liable for Alpha’s debts, which contravenes the non-liability rule; and (ii) the

---

<sup>8</sup> See Section 301.

1 non-recourse rule protects Beta’s associated assets from claims except for claims  
2 asserted by Beta’s creditors.  
3

4 EXAMPLE: Same facts, except that an asset owned by Beta is a “non-associated  
5 asset” – i.e., not associated with Beta (nor with Alpha or the series limited  
6 liability company). Although the asset remains Beta’s property, the asset is  
7 equally subject to levy by a judgment creditor of Alpha, Beta, or the series limited  
8 liability company.<sup>9</sup>  
9

## 10 7. Overcoming the Shield

11  
12 “Piercing the veil” is the foremost doctrine for overcoming the traditional, vertical shield  
13 separating an entity from its owners. “Conflation” is perhaps a more descriptive term, because  
14 the piercing doctrine ignores the formal separateness of entity and owner and treats them as if  
15 they were one. When a creditor succeeds with a piercing claim, the shield falls *in toto*. That is,  
16 all the owner’s non-exempt assets are available to the judgment creditor of the entity.<sup>10</sup>  
17

18 Doubtlessly, the piercing doctrine applies to the vertical shield between a series limited liability  
19 company and its owners.<sup>11</sup> Presumably, the doctrine will also apply to the vertical shield  
20 between a protected series and its associated members. Likewise, the doctrine (or related  
21 theories of affiliate liability) will apply to the internal, horizontal shields – *i.e.*, in the proper  
22 circumstances, a court will disregard the internal shields and negate the non-recourse rule as well  
23 as the non-liability rule.  
24

---

<sup>9</sup> If a judgment creditor of Alpha or the series limited liability company successfully levies on the asset, Beta may have an unjust enrichment claim against the judgment debtor and a damage action against the company for having failed to associate the item with Beta.

<sup>10</sup> 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 expressly negate governance informality 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).

<sup>11</sup> 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 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

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

A protected series is inevitably connected with a limited liability company.<sup>12</sup> Accordingly, protected series provisions are inserts into a jurisdiction's existing limited liability company statute. This act takes the same approach, and is designed to work with any existing limited liability company statute.

---

<sup>12</sup> See Section 105(c)(1) (stating that “[a] protected series of a series limited liability company may not ... continue to exist after the series limited liability company that established the protected series has completed its winding up).

## 10. Extrapolation – Providing Default Rules at the Protected Series Level

A protected series is a business organization, analogous in almost all respects to a limited liability company. Most limited liability company statutes provide default rules to answer questions of internal affairs left unaddressed by a company’s operating agreement.<sup>13</sup> See, e.g., ULLCA (2013), §105(b). The same need exists for a protected series.

This act meets that need by extrapolating the default rules of the limited liability company statute to address analogous issues at the protected series level.<sup>14</sup> For example, suppose a protected series has four associated members but the operating agreement of the series limited liability company is silent on how the protected series is to be managed. The analogous question at the limited liability company level is how the company is to be managed. This act extrapolates the default rule at the limited liability company level to “fill the gap” and answer the question of how the protected series is to be managed. Under almost all limited liability company statutes, the default rule is management by members; hence, the associated members will manage the protected series.

Section 103 details the extrapolation paradigm:

- a protected series is treated *as if it were* a separate limited liability company;
- any associated member of the protected series is treated *as if it were* a member of the separate company;
- any protected series transferee of the protected series is treated *as if it were* a transferee of the separate company;
- any protected series transferable interest of the protected series is treated *as if it were* a transferable interest of the separate company;
- a series manager of the protected series is treated *as if it were* a person managing the separate company;
- any asset of the protected series is treated *as if it were* an asset of the separate company, whether or not the asset is an associated asset of the protected series; and
- any creditor or other obligee of the protected series is treated *as if it were* a creditor or obligee of the separate company.

When an operating agreement leaves unaddressed a question of internal affairs for a protected series, Section 107(c) invokes the Section 103 paradigm to fill the gap. See also Sections 103, cmt. and 107(c), cmt.

---

<sup>13</sup> A protected series does not have its own operating agreement. Rather, the operating agreement of a series limited liability company governs the internal affairs of a protected series of the company. See Section 107(tbd), cmt.

<sup>14</sup> Merriam Webster defines “extrapolate” in relevant part to mean “to infer (values of a variable in an unobserved interval) [i.e., issues at the protected series level] from values within an already observed interval [i.e., default rules at the limited liability company level]”, <http://www.merriam-webster.com/dictionary/extrapolate>, last visited 5/17/16.

1 The extrapolation approach provides two significant advantages. First, the approach avoids  
2 burdening this act with lengthy provisions largely duplicative of provisions in the relevant  
3 limited liability company statute. Second, the approach imports to the protected series level the  
4 same policy choices on default rules reflected at the limited liability company level.

5  
6 Not all issues at the protected series level are subject to extrapolation. This act contains four  
7 types of provisions:  
8

- 9 • mandatory, non-variable provisions – e.g., Sections 105(c)(1) (providing that a protected  
10 series may not “continue to exist after the series limited liability company that established  
11 the protected series has completed its winding up”); 204(a)(1) (providing that a protected  
12 series may be served process by serving the series limited liability company that  
13 established the protected series);<sup>15</sup>
- 14 • default, variable provisions, for situations in which extrapolation would be ineffective or  
15 produce an undesired result – e.g., Sections 303(b) (“If a protected series has no  
16 associated members when established, the series limited liability company owns the  
17 protected series transferable interests in the protected series.”); 304(b) (“Whenever a  
18 protected series has no associated members, the series limited liability company is the  
19 protected series manager.”);
- 20 • the extrapolation provision for internal affairs – i.e., Section 107(c); and
- 21 • extrapolation provisions crafted to address specific situations – e.g., Section 501(4)(a)  
22 (authorizing a court to dissolve a protected series “on application by ... an associated  
23 member or protected series manager of the protected series: (i) in accord with the rules in  
24 Section 103; and (ii) to the same extent, in the same manner, and on the same grounds the  
25 court would enter an order dissolving a limited liability company on application by a  
26 member of or a person managing the company”).

#### 27 28 11. Using the Default Rules of a Jurisdiction’s Limited Liability Statute Makes Enactment 29 Simpler and Produces Parallelism in Concept and Terminology 30

31 Using the default rules of each state’s limited liability company statute facilitates enactment, as  
32 an enacting state need not revisit policy choices about the default rules for management  
33 structure, economic rights, information rights, etc.  
34

35 This approach also produces parallelism in concept and terminology.

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<sup>15</sup> Consistent with other uniform business organization acts, this act provides a single, centralized list of non-waivable and partially non-waivable provisions. See Section 109.

<b>concept</b>	<b>defined term pertaining to series limited liability company</b>	<b>defined term pertaining to a protected series</b>
person with both governance and economic rights	member	associated member
economic rights	transferable interest (rights to distributions from the series limited liability company)	protected series transferable interest (rights to distributions from a protected series)
owner of solely economic rights	transferee	protected series transferee
owned assets	property of (owned by) the series limited liability company	assets of (owned by) a protected series
		associated asset/ non-associated asset of a protected series <sup>16</sup>

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

This act seeks to provide greater “transparency” to the public and greater clarity as to the myriad legal questions raised by the protected series concept. The following chart identifies 21 key issues and compares this act with four statutes from across the non-uniform spectrum of current law.

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<sup>16</sup> A protected series can own an asset without the asset being associated with the protected series. This act labels this category of property as a “non-associated asset.” Only an associated asset is protected by the internal shields of a protected series. *See* Sections 301 and 402.



<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>LLCPSA</b>	<b>Alabama</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Is a separate public filing necessary to establish each protected series?	Yes; § 201(b)	No	No	Yes; 805 ILL. COMP. STAT. 180/37-40(d)	No
Is protected series defined as a legal person?	Yes; § 102(7)	No	Yes; DEL. CODE ANN. tit. 6, § 18-101(12)	No	No
Is the duration of protected series expressly limited to the duration of series limited liability company?	Yes; § 105(c)(1)	Yes; ALA. CODE § 10A-5A-11.09(a)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(m)	Yes; TEX. BUS. ORGS. CODE § 101.616(1)
Must name of protected series include name of series limited liability company?	Yes; § 202	No	No	Yes; 805 ILL. COMP. STAT. 180/37-40(c)	No
Does each protected series have same registered agent as series limited liability company?	Yes; § 203	No	No	Yes; 805 ILL. COMP. STAT. 180/37-40(f)	No
Can service on protected series be made by serving series limited liability company?	Yes; § 204	No	No	Yes; 805 ILL. COMP. STAT. 180/37-40(f)	No

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

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

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>LLCPSA</b>	<b>Alabama</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute expressly and directly require membership in the limited liability company as prerequisite to being associated member of protected series?	Yes; § 103(a)(2)	Yes; ALA. CODE § 10A-5A-11.01(c)	No	No	No
Does the statute address how provisions in the limited liability company statute apply at the protected series level?	Yes; §§ 103, 107(c)	Yes	No	Yes; 805 ILL. COMP. STAT. 180/37-40(j)	Yes; TEX. BUS. ORGS. CODE §§ 101.609, 101.617
Does the statute address whether associated members of a protected series have veto rights to operating agreement amendments affecting the protected series?	Yes; § 304(d)	No	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>LLCPSA</b>	<b>Alabama</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute contain rules for protected series that the operating agreement cannot vary?	Yes; § 109	Yes, but limitation applies only to requirements for maintaining internal shields; ALA. CODE § 10A-5A-1.08(c)(15) (referring to ALA. CODE § 10A-5A-11.02(b)).	No	No	Yes, but limitation applies only to requirements for maintaining internal shields; TEX. BUS. ORGS. CODE § 101.054(a)(2) (referring to TEX. BUS. ORGS. CODE § 101.602(b))
Does the statute provide for registering foreign protected series to do business in the state?	Yes; § 604	No	No	Yes; 805 ILL. COMP. STAT. 180/37-40(o)	No
Does the statute require foreign protected series doing business in the state to comply with same name requirements as domestic protected series?	Yes; § 604(c)	No	No	Yes; 805 ILL. COMP. STAT. 180/37-40(c)	No

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

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

1

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    *{{Note to Drafting Committee (“NTDC”) – Consultation is pending with the Committee on Style*  
7    *and the Executive Director as to how the name should reflect the act’s scope as a “plug in” to*  
8    *other acts.}}*

9  
10           **SECTION 102. DEFINITIONS.** In this [act]:

11           (1) “Asset” means property:

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

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

14           (2) “Associated asset” means an asset that meets the requirements stated in Section 301.

15           (3) “Associated member” means, with respect to a protected series, a member that meets  
16 the requirements stated in Section 302.

17           (4) “Foreign protected series” means a protected series established by a foreign limited  
18 liability company and having attributes comparable to a protected series established under this  
19 [act]. The term applies whether or not the law under which foreign company is organized refers  
20 to “protected series” or “series”.

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

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



(7) “Person” has the meaning stated in [cite the limited liability company statute’s definition of “person” – see, e.g., Uniform Limited Liability Company Act (2013), Section 102(15)]. The term includes a protected series, whether referred to as a “protected series” or “series”.

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

(9) “Protected series manager” means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed pursuant to the operating agreement, this [act], and [the limited liability company statute].

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

(11) “Protected series transferee” means a person to which all or part of a protected series transferable interest has been transferred. The term includes a person that owns a protected series transferable interest as a result of ceasing to be an associated member of a protected series.

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

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

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)
Property	12(17)
Record	102(18)
Sign	102(21)
State	102(22)
Transfer	102(23)
Transferable interest	102(24)
Transferee	102(25)

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

### Comment

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

Property that is subject to a security interest, mortgage, or other lien is nonetheless an asset under this definition; the definition does not affect the rights of lienholders. An asset remains an asset even if “under water” (i.e., the amount owed and secured by the asset exceeds the value of the asset).

**“Associated asset” [2]** – This definition is key to establishing and delineating the “internal shields” provided by Section 401(a)(1)-(4). Even if a protected series is not liable for the debts of its series limited liability company or any other protected series of the company (i.e., no affiliate liability), an asset owned by a protected series is available for creditors of the company or another protected series of the company unless the asset is an associated asset of the protected series. See Section 301 for the recordkeeping required for an asset to obtain and maintain “associated asset” status. See also Section 402 (providing that only an associated asset of a protected series is shielded from claims from creditors of the series limited liability company and other protected series of the company). The same rules apply to assets owned by a series limited liability company.

1       **“Associated member” [3]** – Except for requiring that a person be a member of a series  
2 limited liability company in order to be an associated member of a protected series of the  
3 company, this act does not determine how a member becomes an associated member of a  
4 protected series. The operating agreement must address this important question. See Section  
5 302(b).  
6

7       **“Foreign protected series” [4]** – This definition is derived from ULLCA § 102(5),  
8 which defines “foreign limited liability company” as “an unincorporated entity formed under the  
9 law of a jurisdiction other than this state which would be a limited liability company if formed  
10 under the law of this state.”

11       This act characterizes a domestic protected series as a person, Section 104, but this  
12 definition omits that characterization. Most current statutes do not address the characterization  
13 issue.  
14

15       **“Person” [7]** – The definition of “person” in ULLCA (2013) § 102(15) does not  
16 expressly include a protected series, although that definition’s catchall term – “other ...  
17 commercial entity” – might apply. *{{NFDC – trailing amendment might moot this point.}}*  
18

19       **“Protected series manager” [9]** – This definition derives from Uniform Business  
20 Organization Code (2013), Section 1-102(18)(K) (catchall provision in definition of “governor”).  
21

22       **“Protected series transferee” [11]** – A protected series transferee is analogous to a  
23 transferee of a membership interest, *see* ULLCA (2013) § 102(25), and the definition includes an  
24 associated member of a protected series to whom is transferred a protected series transferable  
25 interest owned by another person. In the analogous context of non-series limited liability  
26 companies, parties have contested whether a member who acquires a transferable interest from  
27 another person needs the consent of fellow members to acquire voting or consent rights  
28 corresponding to the acquired transferable interest. *See, e.g.,* Achaian, Inc. v. Leemon Family  
29 L.L.C., 25 A.3d 800, 810 (Del. Ch. 2011) (Strine, Ch.); Blythe v. Bell, No. 11 CVS 933, 2012  
30 WL 6163118 (N.C. Super. Dec. 10, 2012). Under ULLCA (2013), in the default mode the  
31 question is moot because members consent or vote per capita. *See* ULLCA (2013) §§ 501, cmt.  
32 and 502, cmt.

33       Where, however, the applicable limited liability company statute or operating agreement  
34 allocates voting or consent rights in terms of economic rights, the operating agreement should  
35 expressly resolve the question. The same is true with regard to a protected series and the  
36 acquisition by an associated member of another person’s protected series transferable interest.

37       In the latter case, if the operating agreement fails to address the issue, under Sections 103  
38 and 107(c) the question will be resolved under the default rules of the applicable limited liability  
39 company statute. Because these provisions extrapolate from the applicable limited liability  
40 company statute and not the operating agreement, *see* Section 103(a), cmt., this result will obtain  
41 even if the operating agreement *does* address the question at the limited liability company level  
42 unless:

- 43       • the operating agreement contains a provision applying terms pertaining at the limited  
44 liability company level to analogous situations at the protected series level; or
- 45       • a court determines as a matter of contract interpretation that the members of the series  
46 limited liability company intended the rule on this issue to be the same at both the

1 limited liability company and protected series levels.

2  
3 The second sentence of the definition contemplates rules such as ULLCA (2013) §  
4 603(a)(3) (providing that “[i]f a person is dissociated as a member . . . any transferable interest  
5 owned by the person in the person’s capacity as a member immediately before dissociation is  
6 owned by the person solely as a transferee”), made applicable at the protected series level by  
7 Sections 103 and 107(c).

8  
9 **SECTION 103. RULES APPLICABLE WHEN APPLYING [LIMITED**  
10 **LIABILITY COMPANY STATUTE] TO [ACT].**

11 (a) Subject to subsection (b) and for the purposes of applying Sections 107(c), 108,  
12 501(4)(A)(i), and 502(a), the following rules apply:

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

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

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

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

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

25 (6) any asset of the protected series is deemed to be an asset of the company  
26 deemed to exist under paragraph (1), whether or not the asset is an associated asset of the  
27 protected series;

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

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

(1) vary the effect of Sections 108 or [cite limited liability company statute provision limiting the power of an operating agreement – see, e.g., Uniform Limited Liability Company Act (2013), Section 105];

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

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

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

### **Comment**

**Subsection (a)** – The provision provides the mechanics for the extrapolation approach which is at the core of this act. See Prefatory Note, Part 10. In effect, this provision “deems up” each construct at the protected series level to the analogous construct at the limited liability company level. This provision is not self-executing. It applies only when a provision of this act expressly invokes Section 103.

The provision does not “deem up” a protected series designation and does not refer to the operating agreement. A protected series designation has no analog at the limited liability company level. A certificate of formation would be the closest, but that certificate does far more than is done by a protected series designation. As for the operating agreement, again no analog exists. A protected series does not have its own operating agreement.

**Subsection (b)(2)** – This provision does not address the question of whether the filing office may, may not, or shall accept for filing a record that includes information beyond that specified by the statute that provides for the filing of the record.

**SECTION 104. NATURE OF PROTECTED SERIES.** A protected series of a series limited liability company is a person distinct from:

- 1 (1) the company, except as otherwise provided in Section 105(c)(1);
- 2 (2) another protected series of the company;
- 3 (3) a member of the company, whether or not the member is an associated member of the
- 4 protected series;
- 5 (4) a protected series transferee of any protected series of the company;
- 6 (5) a transferee of a transferable interest of the company.

7 **Comment**

8  
9 Section 105(c)(1) provides that a protected series cannot exist on its own; therefore, a  
10 protected series is not entirely distinct from the limited liability company whose existence is a  
11 precondition to the existence of the protected series.  
12

13 **SECTION 105. POWERS AND DURATION OF PROTECTED SERIES.**

- 14 (a) A protected series has the capacity to sue and be sued in its own name.
- 15 (b) Except as otherwise provided in subsection (c), a protected series has the same
- 16 powers that a limited liability company has under [cite the provision of the limited liability
- 17 company statute specifying a limited liability company's powers – see, e.g., Uniform Limited
- 18 Liability Company Act (2013), Section 109].
- 19 (c) A protected series of a series limited liability company may not:
  - 20 (1) continue to exist after the series limited liability company that established the
  - 21 protected series has completed its winding up;
  - 22 (2) be a member of the company;
  - 23 (3) establish a protected series;
  - 24 (4) have a protected series transferable interest, management or voting right, or
  - 25 any other right in another protected series of the company;
  - 26 (5) be a party to a merger, interest exchange, conversion, domestication, or

comparable transaction;

(6) except as permitted by law of this state, do anything or have any purpose that the law of this state prohibits a limited liability company from doing or having[.]; or]

(7) ....]

**Legislative Note:** Section 105(c)(7) is provided in case an enacting state decides that a power, a purpose, or conduct acceptable for a limited liability company is not acceptable for a protected series.

### Comment

**Subsection (a)** – This subsection cannot be varied by the operating agreement. Section 109(3).

**Subsection (b)** – This act incorporates by reference the powers of a limited liability company under the relevant limited liability company statute. If that statute contains a detailed list of powers, the same list applies at the protected series level (subject to restriction by the operating agreement).

Beginning with ULPA (2001) § 105, the Uniform Law Commission has eschewed listing in detail the powers of a business organization. See, e.g., Uniform Limited Liability Company Act (2013), Section 109 (“A limited liability company has ... the power to do all things necessary or convenient to carry on its activities and affairs.”) The approach has caused no problems to date, and for Uniform Limited Liability Company Act (2013) and comparable statutes, this subsection incorporates by reference a general grant of powers.

Those general powers certainly include the power to make contracts and own real and other property, which are key attributes to the concept of a legal person. Changes in the Model Business Corporation Act Relating to Domestication and Conversion--Final Adoption, 58 Bus. Law. 219, 223 (2002) (adding a new definition to the Model Business Corporation Act, Section 1.04(24A) (providing that “[u]nincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name....”). Cf. Katsuhito Iwai, “Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance, 47 Am. J. Comp. L. 583, 583 (1999) (“The law speaks of a business corporation as a ‘legal person,’ as a subject of rights and duties capable of owning real property, entering into contracts, and suing and being sued in its own name ....”); Uniform Business Organizations Code, Section 1-102(A)(x)(II) (defining “entity” to include *inter alia* “any ... person that has ... the power to acquire an interest in real property in its own name”).

*Pac Re 5-AT v. Amtrust N. Am., Inc.*, No. CV-14-131-BLG-CSO, 2015 WL 2383406, at \*4 (D. Mont. May 13, 2015) is distinguishable, because the statute at issue there differs fundamentally from this act. *Pac Re* interpreted the Montana statute that provided for protected cell captive insurance companies [PCC]). The decision noted that “the statute does not contemplate that the assets of a protected cell will be used to satisfy the liabilities of any other

cell” but held that “[w]ithout a separate legal identity, and absent a statutory grant to the contrary, a protected cell does not have the capacity to sue and be sued independent of the larger PCC”). In contrast, Section 104 expressly states that a protected series is a legal person, and Section 105(a) specifically provides the capacity to sue and be sued.

Just as the operating agreement may limit the powers of a limited liability company, the operating agreement may limit the power of the protected series of a limited liability company. If the operating agreement restricts the company’s powers, the agreement will likely impose the same limits on the powers of any protected series of the company. If not, under this subsection a protected series will have broader powers than its series limited liability company.

**Subsection (c)(1)** – A protected series may not exist outside the context of the series limited liability company that established it. This provision is non-variable. Section 109(5) *{{NTDC – revisit if mergers authorized}}*

**Subsections (c)(2)-(4)** – These limitations, which the operating agreement cannot vary, Section 109(5), preclude structures that would be painfully Byzantine or would push the extrapolation construct beyond any understandable application. For a discussion of the extrapolation construct, see Prefatory Note, Part 10.

**Subsection (c)(4)** – This provision does not prevent one protected series from being a protected series manager of another protected series of the series limited liability company. A protected series manager is an agent of the protected series, and an agent does not “have rights” in its principal.

**Subsection (c)(5)** – *{{NTDC – to be revisited after the committee re-visits whether to allow simple mergers}}*.

**Subsection (c)(6)** – A limited liability company may not use a protected series to evade a requirement of other law. This provision’s introductory language – “[e]xcept as permitted by law of this state ...” – refers to situations in which state law authorizes a protected series of a series limited liability company to operate under the auspices of a license obtained or regulatory filing made by the company in the company’s name.

This provision refers to permitted purposes as well as powers but does not otherwise prescribe the purpose of a protected series. If the operating agreement does not address the question, Sections 103 and 107(c) will extrapolate to the protected series level whatever purposes the limited liability company statute authorizes for a limited liability company. If an operating agreement restricts the purposes of a series limited liability company but does not accordingly restrict the purpose of the protected series of the company, the result may be anomalous. A protected series will have broader permitted purposes than the series limited liability company itself. A comparable issue exists with regard to powers. See Subsection (b), cmt. (last paragraph).



1           **SECTION 106. GOVERNING LAW.** The law of this state governs:

2           (1) the internal affairs of a protected series;

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

4                   (A) the series limited liability company that established the protected series;

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 protected series manager that is not a protected series manager of the  
8 protected series;

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

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

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

15                   (B) a member of the limited liability company that established the protected series  
16 which is not an associated member of the protected series;

17                   (C) a protected series manager that is not a protected series manager of the  
18 protected series;

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

21                   (E) a person managing the company; or

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

23           (4) the liability of a series limited liability company for a debt, obligation, or other

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

3 (A) having established the protected series;

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

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

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

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

11 (A) the protected series:

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

14 (ii) being or acting as a protected series manager of another protected  
15 series of the company or as a person managing the company; or

16 (B) the company owning a protected series transferable interest of the protected  
17 series.

## 18 **Comment**

19 **Paragraph (1)** – The concept of “internal affairs” presupposes an organization that is a  
20 legal person and thus applies to a protected series under this act. See Section 104 (stating that  
21 “[a] protected series ... is a person”).

22 The internal affairs of a protected series include: (i) relations among associated members,  
23 if any, and between associated members, if any, and the protected series; (ii) relations between a  
24 protected series transferee and the protected series and any associated members; (iii) the rights  
25 and duties of a protected series manager; (iv) governance decisions affecting the activities and  
26 affairs of the protected series and the conduct of those activities and affairs; and (v) procedures  
27 and conditions for becoming an associated member. For a detailed discussion of “internal  
28 affairs,” see, Uniform Limited Liability Company Act (2013), Section 104, cmt.

**Paragraph (2)** – The listed relationships are not within the internal affairs of a protected series. Arguably, the relationships are part of the internal affairs of the series limited liability company, see Uniform Limited Liability Company Act (2013), Section 104(1) (stating that “[t]he law of this state governs ... the internal affairs of a limited liability company”). This provision is included for the avoidance of doubt.

*{{NTDC – “in that capacity” removed throughout section; inserting a comment sufficient? necessary?}} {{NTDC – This section is one of several places containing a lengthy list of relationships. FTC Subcommittee will assure consistency.}}*

**SECTION 107. RELATION OF OPERATING AGREEMENT, THIS [ACT], AND [LIMITED LIABILITY COMPANY STATUTE].**

(a) Except as otherwise provided in this section and subject to Sections 108 and 109, the operating agreement of a series limited liability company governs:

(1) the internal affairs of a protected series;

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

(3) relations between the protected series, its protected series manager, any associated member of the protected series, or any protected series transferee of the protected series and another person in the other person’s capacity as:

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

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

(C) a transferee of the company.

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

(c) If neither the operating agreement nor this [act] provides for a matter described in subsection (a), [the limited liability company statute] governs the matter according to the rules

1 stated in Section 103.

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

3 (1) vary the effect of Section 108 or 109; or

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

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

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

#### 11 **Comment**

12 A protected series does not have an operating agreement of its own, and the operating agreement  
13 of a series limited liability company should adequately address issues at the protected series  
14 level. Some operating agreements use exhibits or appendixes to address most, or all, of those  
15 issues. (If not all, presumably the other issues are addressed in the main body of the agreement.)  
16

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

24 **Subsection (a)(1)** – See Section 106(1), cmt.  
25

26 **Subsection (a)(3)** – *{{NTDC: Query – what about an associated member of the protected*  
27 *series in a different capacity (e.g., as a member simpliciter or as an associated member of a*  
28 *different protected series)?}}*  
29

30 **Subsection (c)** – Most limited liability company statutes provide default rules to address  
31 questions of internal affairs left unaddressed by a company’s operating agreement. See, e.g.,  
32 Uniform Limited Liability Company Act (2013), Section 105(b). Comparable gaps can exist at  
33 the protected series level, but, unlike a limited liability company statute, this act does not provide  
34 a full set of “gap fillers.” Instead, this act assumes that, in most circumstances, the default rules  
35 in place at the limited liability company level are equally appropriate at the protected series level.

1 This act does state some rules pertaining to the internal affairs of a protected series, but these  
2 rules are not comprehensive.

3 Thus, a question may arise pertaining to the internal affairs of a protected series to which  
4 neither the operating agreement nor this act provides an answer. In that situation, this provision  
5 and Section 103 invoke the limited liability company statute, and the answer is determined by  
6 extrapolating to the protected series level the rule for the analogous situation at the limited  
7 liability company level. Section 103 provides the extrapolation paradigm – *i.e.*, using the default  
8 rules of the limited liability company statute while treating a protected series as if it were a  
9 limited liability company, an associated member of the protected series as if it were a member of  
10 that “as if” limited liability company, etc. See Prefatory Note, Part 10.

11 This subsection applies only to a protected series’ internal affairs and not, for example, to  
12 this act’s definitions. Of course, a provision of an operating agreement which violates Section  
13 108 or 109 is ineffective to “provide for” a matter.

14  
15 **SECTION 108. [LIMITED LIABILITY COMPANY STATUTE’S] LIMITS ON**  
16 **OPERATING AGREEMENT APPLICABLE TO MATTERS UNDER THIS ARTICLE.**

17 If [the limited liability company statute – see, e.g., Uniform Limited Liability Company Act  
18 (2013), Section 105(c), (d)(3), and (e)] prohibits an operating agreement from varying a  
19 provision of [the limited liability company statute], limits the extent to which the agreement may  
20 vary a provision, or restricts the agreement in any other way, the prohibition, limitation, or  
21 restriction applies to a matter under this [act] according to the rules stated in Section 103.

22 **Comment**

23 In concert with Section 103, this provision makes certain that restrictions stated in the limited  
24 liability company statute on the powers of an operating agreement apply to analogous situations  
25 at the protected series level. For example, Sections 103 and 107(c) extrapolate the concept of a  
26 derivative claim to the protected series level. Uniform Limited Liability Company Act (2013),  
27 Section 105(c)(11) prohibits an operating agreement from imposing unreasonable restrictions on  
28 *inter alia* a member’s right to bring a derivative claim. Under this section and Section 103, that  
29 prohibition applies to the right of an associated member of a protected series to bring a derivative  
30 claim pertaining to the protected series.

31  
32 **SECTION 109. ADDITIONAL LIMITATIONS ON OPERATING AGREEMENT.**

33 An operating agreement may not vary:

34 (1) this section;

35 (2) the nature of a protected series as stated in Section 104;

1 (3) the capacity of a protected series under Section 105(a) to sue and be sued in its own  
2 name;

3 (4) Section 105(b) to provide a protected series a power in addition to the powers  
4 provided to a limited liability company under [the limited liability company statute];

5 (5) the limitations stated in Section 105(c) on the powers of a protected series;

6 (6) the law applicable under Section 106;

7 (7) the application under Section 108 of prohibitions, limitations, and restrictions on the  
8 operating agreement;

9 (8) the requirements and procedures under Section 201 for establishing a protected series,  
10 except that the operating agreement may vary the manner in which a limited liability company  
11 authorizes establishing a protected series;

12 (9) the requirements in Section 202 for the name of a protected series;

13 (10) the requirements and procedures in Section 301 for making an asset an associated  
14 asset;

15 (11) the requirements under Section 302 that:

16 (A) a person be a member of a series limited liability company to be an associated  
17 member of a protected series of the company; and

18 (B) a person's dissociation as a member simultaneously causes the person to cease  
19 to be an associated member of any protected series of the company;

20 (12) the requirement under Section 303(a) that a protected series transferable interest  
21 must be owned initially by an associated member of the protected series or the series limited  
22 liability company that established the protected series;

23 (13) the principles identified in Section 401(b) as governing claims to disregard a

1 limitation of liability stated in Section 401(a);

2 (14) the procedures and requirements under Section 402 to enforce claims against non-  
3 associated assets;

4 (15) the rights under Section 403 of a judgment creditor;

5 (16) the circumstances stated in Section 501(1) and (4) as causing dissolution of a  
6 protected series;

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

9 (18) [Article] 6

10 (19) [Article] 7

11 (20) a provision of this [act] pertaining to:

12 (A) registered agents; or

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

15 (21) the rights under this [act] of a person other than a series limited liability company, a  
16 protected series, a protected series manager, or a member, whether or not an associated member  
17 of a protected series, to the prejudice of the person, except to the extent that [the limited liability  
18 company statute] permits the operating agreement to vary the rights of a person not a member or  
19 manager of a limited liability company.

## 20 **Comment**

21  
22 Sometimes—but not always—the comments to this act refer to a variable provision as a “default  
23 rule” and a mandatory provision as “non-variable.” These references are merely to draw attention  
24 to the default/mandatory distinction in particular contexts and have neither the intent nor the  
25 power to affect the default/mandatory status of provisions of this act whose comments lack a  
26 comparable reference.  
27

**Paragraph (4) (Section 105(b))** – A protected series can have no greater power than the limited liability company statute accords a limited liability company. However, nothing in this act precludes the operating agreement from reducing, restricting, or eliminating particular powers.

A restriction stated as to the powers of a series limited liability company does not automatically apply to a protected series of the company. To the contrary, if the operating agreement does not address the issue at the protected series level, Section 105(b) accords the protected series the full powers of a limited liability company. See also Section 105(b), cmt.

**Paragraph (8) (Section 201)** – For example, the operating agreement might decrease the quantum of member consent required to authorize establishing a protected series or grant the authority exclusively to the persons managing the limited liability company.

**Paragraph (13) (Section 401)** – Although the piercing principles may not be varied, the shields themselves – both vertical and horizontal – are variable. The same is true as to the vertical shields provided by the Uniform Limited Liability Company Act (2013), Uniform Limited Partnership Act (2013), and Uniform Partnership Act (2013). See ULLCA (2013) § 105(c) (not including the shield in the list of non-variable provisions); ULPA (2013) § 105(c) (same); UPA (2013) (same).

**Paragraph (16) (Section 501(4))** – The operating agreement may not change the stated grounds for judicial dissolution but may determine the forum in which a claim for dissolution under Section 501(4) is determined. For example, arbitration and forum selection clauses are commonplace in business relationships in general and in operating agreements in particular.

**Paragraph (21)** – *{{NTDC – Further analysis required to determine whether this provision can be re-phrased in terms of extrapolation.}}*

**[ARTICLE] 2**

## ESTABLISHING PROTECTED SERIES

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

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

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



1 (c) A protected series is established when the protected series designation becomes  
2 effective under [cite to provision of limited liability company statute determining when a record  
3 delivered for filing becomes effective – see, e.g., Uniform Limited Liability Company Act  
4 (2013), Section 207].

5 (d) A series limited liability company may amend a protected series designation by  
6 delivering to the [Secretary of State] for filing a statement of designation change that changes the  
7 name of the company or the name of the protected series to which the designation applies or  
8 both. The change takes effect when the statement of designation change becomes effective  
9 under [cite to provision of limited liability company statute determining when a record delivered  
10 for filing becomes effective – see, e.g., Uniform Limited Liability Company Act (2013), Section  
11 207].

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

15 *Subsection (b) presupposes that an enacting state’s limited liability company statute will*  
16 *determine who may sign this record. See, e.g., Uniform Limited Liability Company Act (2013),*  
17 *Section 203(a)(1) (stating that in general “a record signed by a limited liability company must*  
18 *be signed by a person authorized by the company”). If no such “catch-all” provision exists,*  
19 *either this act or the limited liability company statute should be revised accordingly.*

## 20 21 **Comment**

22  
23 The operating agreement of a series limited liability company cannot vary this section,  
24 except to change the approval method stated in subsection (a). Section 109(8).

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

32  
33 **Subsection (c)** – A protected series may be established without associated members.  
34 *Contrast* Uniform Limited Liability Company Act (2013), Section 201(d) (“A limited liability  
35 company is formed when the certificate of organization becomes effective and at least one

1 person has become a member.”) Likewise, a protected series may be established without any  
2 assets (whether or not associated).

3 If a protected series is established without associated members, the series limited liability  
4 company:

- 5 • owns all the protected series transferable interests, Section 303(b) (applicable only at  
6 establishment and subject to subsequent transfers by the company); and
- 7 • is the series manager of the protected series, Section 304(b) (applicable throughout the  
8 existence of the protected series – i.e., whenever a protected series has no associated  
9 members).

10  
11 **Subsection (d)** – This provision uses “statement of designation change” to avoid  
12 confusion with statutes that use “statement of change” for a different purpose. See, e.g., Uniform  
13 Limited Liability Company Act (2013), Section 116 (Change of Registered Agent or Address for  
14 Registered Agent by Limited Liability Company).

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

21 For the reasons stated in the comment to subsection (b), the limited liability company  
22 statute governs who has authority to sign for the company a statement of designation change, etc.  
23

## 24 **SECTION 202. NAME.**

25 (a) Except as otherwise provided in subsection (b), the name of a protected series must  
26 comply with [the provision of the limited liability company statute or other statute imposing  
27 name requirements on a limited liability company – see, e.g., Uniform Limited Liability  
28 Company Act (2013), Section 112].

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

30 (1) begin or end with the name of the company, including any word or  
31 abbreviation required by [cite the “designator” provision of the limited liability company statute  
32 – see, e.g., Uniform Limited Liability Company Act (2013), Section 112(a)] [other statute  
33 imposing name requirements on a limited liability company – see, e.g., Uniform Business  
34 Organizations Code (2013) Section 1-302(d)] to designate that the company is a limited liability  
35 company; and

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

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

### **Comment**

**Subsection (b)(1)** – This provision, together with the filing requirement of Section 201(b) (statement of designation), provides substantial transparency, allowing a person to search the public record to determine:

- whether a limited liability company is a series limited liability company;
  - if so, the identity of all protected series of the company; and
- whether an organization is a protected series;
  - if so, the identity of the series limited liability company and any other protected series of the company.

For similar protections with regard to foreign protected series, see Sections 604(c) and 605.  
*{{NTDC – Reporter will check with IACA for the views of the filing offices on “begin or end with” versus “begin with”.}}*

**Subsections (b)(1) and (c)** – Due to these provisions, 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 for a series limited liability company is the registered agent in this state for each protected series of the company.

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

(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.

(e) A person that ceases to be the registered agent for 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.

(f) 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)** – It is not necessary for this act to state what happens when a protected series lacks an agent for service of process. In that situation: (i) under this subsection the company perforce also lacks an agent; (ii) under most limited liability company statutes that lack, if uncorrected, will lead to administrative dissolution; and (iii) under section 501(1), that dissolution causes the protected series to dissolve.

**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 ULLCA (2013) § 203(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.

**Subsection (f)** – Under this provision, unless otherwise agreed, the series limited liability company rather than the registered agent must do the sorting.

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

(a) A protected series may be served with any process, notice, demand, or other record

1 required or permitted by law by:

2 (1) serving the series limited liability company that established the protected  
3 series;

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

5 (3) other means authorized by law of this state other than this [act].

6 (b) Service of a summons and complaint on a series limited liability company or foreign  
7 series limited liability company is notice to each protected series of the company or foreign  
8 protected series of the foreign company of service of the summons and complaint and the  
9 contents of the complaint. Service of a summons and complaint on a protected series of a series  
10 limited liability company or foreign protected series of a foreign series limited liability company  
11 is notice to the company and any other protected series of the company, or the foreign company  
12 and any other foreign protected series of the foreign company of service of the summons and  
13 complaint and the contents of the complaint.

14 (c) Notice under subsection (b) is effective against a person whether or not the summons  
15 and complaint identify the person if the summons and complaint name as a party and identify:

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

17 (2) the foreign series limited liability company or a foreign protected series of the  
18 foreign company.

### 19 **Comment**

20  
21 **Subsection (a)** – Under this provision, serving a protected series by serving the series  
22 limited liability company that established the protected series has the same effect as serving the  
23 protected series' registered agent. Subject to subsections (b) and (c), effective service requires  
24 that the protected series being served be adequately identified.

25 Service of a record on a protected series (however effected) does not affect the protected  
26 series if the record is inapposite. For example, serving a summons to a deposition on a series  
27 limited liability company has no effect on a protected series unless the summons names the  
28 protected series as the deponent. Likewise, serving a protected series with a charging order

1 pertaining to a judgment debtor has no effect if the debtor is neither an associated member of the  
2 protected series nor a protected series transferee.

3 This act does not provide for substituted service if the registered agent of a protected  
4 series cannot be found, because, in concert with this subsection and Section 203(a), the limited  
5 liability company statute will provide adequate recourse, as follows:

- 6
- 7 • If the registered agent of a protected series cannot be found, perforce neither can the
- 8 registered agent of the series limited liability company.
- 9 • However, the limited liability company statute (or some other state statute) will provide
- 10 for substituted service on the series limited liability company – see, e.g., ULLCA (2013)
- 11 § 119(b).
- 12 • Under this subsection, service on the company is service on the protected series.
- 13 • A person seeking to serve the protected series can do so by serving the company through
- 14 the means provided for substitute service on the company.
- 15

16 **Subsections (b), (c)** – In a world of complex, multi-tiered, multipart organizations, it is  
17 not always easy to identify which part of such an organization is legally responsible for a  
18 particular claimed harm. This difficulty enhances statute of limitations risk. This subsection is  
19 intended to help mitigate that risk by addressing the “relating back” issue.

20 Both federal and state courts provide criteria for amending a complaint to name a new  
21 party and having the amendment relate back to the original complaint. *See, e.g.*, F.R.C.P. 15(c),  
22 Minn.R.Civ.P. 15(h). While “relating back” solves the statute of limitations problem, the  
23 relating back rules require *inter alia* that “the party to be brought in by amendment ... received  
24 such notice of the action that it will not be prejudiced in defending on the merits.” F.R.C.P.  
25 15(c)(1)(C)(i).

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

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

38 Moreover, federal and some state courts disfavor the tactic. *See, e.g.*, *Barrow v.*  
39 *Wethersfield Police Dep't*, 66 F.3d 466, 468 (2d Cir. 1995), modified, 74 F.3d 1366 (2d Cir.  
40 1996) (“We have stated that it is familiar law that ‘John Doe’ pleadings cannot be used to  
41 circumvent statutes of limitations because replacing a ‘John Doe’ with a named party in effect  
42 constitutes a change in the party sued. Thus, such an amendment may only be accomplished  
43 when all of the specifications of Fed.R.Civ.P. 15(c) [relating back rule] are met.”) (quoting  
44 *Aslanidis v. United States Lines, Inc.*, 7 F.3d 1067, 1075 (2d Cir.1993); internal quotation marks  
45 and brackets in original omitted); *State ex rel. Holzum*, 342 S.W.3d 313, 316 (Mo. 2011)  
46 (holding that naming Doe defendants is immaterial to a motion to relate back an amendment to

1 the complaint and stating that the applicable rule “allows a change in parties but requires that the  
2 correct party defendant receive ‘notice’ of the original action”).

3 These subsections apply to series limited liability companies and protected series and also  
4 to foreign series limited liability companies and foreign protected series.  
5

## 6 **SECTION 205. CERTIFICATE OF GOOD STANDING FOR PROTECTED**

### 7 **SERIES.**

8 (a) On request of any person, the [Secretary of State] shall issue a certificate of good  
9 standing for a protected series. The certificate must state:

10 (1) the name of the protected series and the name of the series limited liability  
11 company that established the protected series;

12 (2) that a certificate of designation pertaining to the protected series has been filed  
13 and taken effect;

14 (3) the date the certificate took effect;

15 (4) if any statement of designation change pertaining to the protected series has  
16 taken effect, the effective date and contents of that statement;

17 (5) that no statement of termination of the protected series has been filed;

18 (6) that all fees, taxes, interest, and penalties owed to this state by the protected  
19 series and collected through the [Secretary of State] have been paid, if:

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

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

22 (7) that the most recent [annual] [biennial] report required by [the limited liability  
23 company statute] includes the name of the protected series and has been delivered to the  
24 [Secretary of State] for filing; and

25 (8) other facts reflected in the records of the [Secretary of State] pertaining to the  
26 protected series which the person requesting the certificate reasonably requests.

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

**Legislative Note:** *This section parallels Uniform Limited Liability Company Act (2013), Section 211 (Certificate of Good Standing or Registration). An enacting state should revise this section as necessary to parallel the comparable provision in the state's limited liability company statute.*

#### Comment

This section applies only to protected series of a domestic series limited liability company. Under Section 604, each foreign protected series seeking registration is treated as if the foreign protected series were a foreign limited liability company. As a result, under Section 604, a foreign protected series may obtain a statement of registration under the appropriate provision of the limited liability company statute – see, e.g., Uniform Limited Liability Company Act (2013), Section 211.

**Subsection (a)** – This subsection parallels the provisions of ULLCA (2013) § 211, pertaining to domestic limited liability companies, with one exception. This provision has no parallel to ULLCA § 211(b)(2)(D)(ii) – that “the records of the [Secretary to State] do not otherwise reflect that the [limited liability] company has been dissolved or terminated.” To make that determination about a protected series, the filing office would have to determine whether its records disclose the dissolution of the series limited liability company. Requiring that determination for each certificate of good standing for a protected series would impose unnecessary costs. For example, suppose that a person seeks a certificate of good standing for 15 protected series of the same series limited liability company. The requestor needs only one certification that the company is in good standing, not 15. See comment to subsection (a)(8).

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

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

**REPORT.** The [annual][biennial] report that [the limited liability company statute] requires be delivered to the [Secretary of State] for filing must, in the case of a series limited liability company, also include the name of each protected series of the company. The failure of the company to include the name of a protected series does not dissolve or otherwise affect the



1 protected series but does prevent issuance of a certificate of good standing pertaining to the  
2 protected series.

### 3 [ARTICLE] 3

## 4 ASSOCIATED ASSETS; ASSOCIATED MEMBERS; PROTECTED SERIES

## 5 TRANSFERABLE INTEREST; MANAGEMENT

### 6 SECTION 301. ASSOCIATED ASSETS.

7 (a) Only property that is an asset of a protected series may be an associated asset of the  
8 protected series. Only property that is an asset of a series limited liability company may be an  
9 associated asset of the company.

10 (b) An asset of a protected series is an associated asset of the protected series only if the  
11 series limited liability company that established the protected series creates and maintains a  
12 record or set of records that identifies the protected series and:

13 (1) describes the asset with sufficient specificity to permit a disinterested,  
14 reasonable individual to identify the asset and distinguish it from:

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

17 (B) assets of any other protected series of the series limited liability  
18 company, whether or not the assets are associated assets of the other protected series; and

19 (C) assets of the company, whether or not the assets are associated assets of  
20 the company;

21 (2) states when and from what person the protected series acquired the asset;

22 (3) if the protected series acquired the asset from the company or another protected  
23 series of the company, states the consideration paid, the payer, and the payee;

1 (4) if the protected series transfers the asset, or any part of the asset, states when and  
2 to what person the protected series made the transfer; and

3 (5) if the protected series transferred the asset to the company or another protected  
4 series of the company, states the consideration received, the payee, and the payer.

5 (c) To the extent permitted by law of this state other than this [act] and subject to subsections  
6 (a) and (b), a protected series may hold an associated asset directly or indirectly, through a  
7 representative, nominee, or otherwise, but may not hold the asset in the name of the series limited  
8 liability company or another protected series of the company.

9 (d) A series limited liability company may make an asset an associated asset of the  
10 company in accord with this section.

### 11 **Comment**

12  
13 This section states the recordkeeping mechanics required to make an asset an associated  
14 asset of a protected series or series limited liability company. Section 402 states the  
15 consequences of non-compliance.

16 Section 402 also determines, albeit by implication, how long the records required by this  
17 section should be maintained. The statute of limitations applicable to voidable transactions is  
18 also relevant. See comment to Section 402.

19  
20 **Subsection (a)** – Only property that is an asset of a protected series may be an associated  
21 asset of the protected series. The same rule applies to the series limited liability company itself.  
22 Thus, associated assets are a subset of assets (although, if the recordkeeping is satisfactory, the  
23 subset will be co-extensive with the set).

24  
25 **Subsection (b)** – This provision states the recordkeeping required for an asset to be an  
26 associated asset. ULLCA (2013) § 102(18) defines “record” as “information that is inscribed on  
27 a tangible medium or that is stored in an electronic or other medium and is retrievable in  
28 perceivable form.” The reference to “a record or set of records” indicates that the necessary  
29 information may be found in one record (*e.g.*, one spreadsheet) or a combination of records.

30 A series limited liability company has the duty to maintain the records required for each  
31 protected series of the company and for the company itself. The duty is delegable, but delegation  
32 does not discharge the duty.

33 *{{NTDC – Our liaison to the Committee on Style predicted that the Committee would not accept*  
34 *a statute that creates a duty but leaves open the question of who is responsible for discharging*  
35 *the duty.}}*

36 The question of who, other than the series limited liability company, has access to these

1 records depends in part on the status of the person requesting access. Section 107(c) and Section  
2 103 determine the information rights of an associated member to information pertaining to a  
3 protected series, unless the operating agreement addresses the issue. Section 305 determines the  
4 rights of a member that is not an associated member of a protected series to information  
5 concerning that protected series, including the rights of a person previously associated with a  
6 protected series. *{{NTDC – Need rule for access of a protected series manager.}}*

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

10  
11 **Subsection (b)(1)** – In this context, a “reasonable individual” has at least a general  
12 familiarity with business records. However, the reasonable individual standard does not require  
13 familiarity with generally accepted accounting principles (GAAP) or any other particular set of  
14 accounting rules. It follows that records decipherable only by a forensic accountant do not meet  
15 the standard.

16 By the same token, this provision does not require that the recordkeeping comply with  
17 GAAP or any other particular set of accounting rules.

18  
19 **Subsection (b)(1)(A)-(C)** – Under these provisions, each protected series has an interest  
20 in the specificity and accuracy of records maintained by the series limited liability company and  
21 any other protected series of the company. A record that would otherwise satisfy subsection (b)  
22 could fail to do so because another record maintained by the company, concerning another  
23 protected series, renders the first record ambiguous (and likely the other record as well).

24  
25 **Subsection (b)(2)-(5)** – These provisions impose substantial transparency requirements.

26  
27 **Subsection (b)(3), (5)** – These provisions impose additional transparency requirements in  
28 transactions between a series limited liability company and one of its protected series or between  
29 two protected series of the company.

30  
31 **Subsection (b)(3)** – In almost all instances, the protected series will pay the  
32 consideration. However, a protected series might acquire an asset through a third party  
33 beneficiary contract, including one in which the protected series is a donee beneficiary.  
34 Likewise, a protected series might make payment to an assignee of the transferor.

35  
36 **Subsection (b)(5)** – See the comment to Subsection (b)(3).  
37 *{{NTDC – A comment will explain that, once an associated asset is transferred, the transferor*  
38 *faces no specific consequence for not creating or retaining this record – beyond voidable*  
39 *transaction statutes – but that a pattern of not conforming with this requirement could be a*  
40 *ground for piercing.}}*  
41 *{{NTDC – Need to have a tracing provision, applicable once a claim is made against an asset.}}*

42  
43 **Subsection (c)** – Under this provision, stock could constitute an associated asset of a  
44 protected series, even though the stock is held in “street name” by a brokerage firm.

45 *{{NTDC: Query – should the exception be replaced with permission provided the*  
46 *representative capacity and actual owner are disclosed? E.g., ABC LLC – Protected Series 1, as*

1 *trustee for ABC LLC.}}*

2  
3 **Subsection (d)** – The horizontal liability shields that characterize a series limited liability  
4 company apply to the company as well as to each protected series. See Section 401(a)(1)-(4).  
5 As explained in Prefatory Note, Parts 5-6, the horizontal shields provide the non-liability rule.  
6 To have the protection of the non-recourse rule, a series limited liability company must comply  
7 with this section so that the company’s assets are associated assets.  
8

9 **SECTION 302. MEMBERSHIP REQUIRED TO BE ASSOCIATED MEMBER;**  
10 **OPERATING AGREEMENT TO SPECIFY ASSOCIATED MEMBER.**

11 (a) Only a member of a series limited liability company may be an associated member of  
12 a protected series of the company. If a person is dissociated from a series limited liability  
13 company, the person immediately ceases to be an associated member of any protected series of  
14 the company.

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

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

19 (2) states what, if any, protected series transferable interest the associated member  
20 has in connection with becoming or being an associated member.

21 **Legislative Note:** *Following Uniform Limited Liability Company Act (2013), Section 401(d),*  
22 *Section 302(b)(2) permits a member to be an associated member of a protected series without*  
23 *having an economic interest in the protected series. If a state’s limited liability company statute*  
24 *does not permit “non-economic members,” Section 302(b)(2) should omit the phrase “, if any,”.*  
25

26 **Comment**

27  
28 **Subsection (a)** – The requirement stated here is fundamental to this act and corresponds  
29 with the definition of “associated member,” Section 102(3) (defining “associated member” as “a  
30 member that meets the requirements stated in Section 302) (emphasis added). The operating  
31 agreement can and typically will specify other events causing a member to cease being an  
32 associated member of a protected series.  
33

34 **Subsection (b)** – Because this provision addresses the question of how a member

1 becomes an associated member, extrapolation for internal affairs (Sections 103 and 107(c)) does  
2 not apply. In contrast, extrapolation will determine the consequences of a member ceasing to be  
3 an associated member of a protected series, unless the operating agreement addresses the matter.  
4 *{{NTDC – Is the result stated in the first sentence of this comment the correct result? What*  
5 *happens if an operating agreement, with a merger provision, leaves gaps in the process for*  
6 *identifying associated members?}}*

### 8 **SECTION 303. PROTECTED SERIES TRANSFERABLE INTERESTS.**

9 (a) A protected series transferable interest of a protected series must be owned initially  
10 by an associated member of the protected series or the series limited liability company that  
11 established the protected series.

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

14 (c) A series limited liability company may acquire a series transferable interest through a  
15 transfer from another person or as provided in the operating agreement.

#### 16 **Comment**

17  
18 Subject to subsection (b), this section and Section 302(b) leave to the operating  
19 agreement the initial allocation of protected series transferable interests.

20  
21 **Subsection (a)** – A protected series transferable interest can be owned initially only by an  
22 associated member or the series limited liability company. *Compare* ULLCA (2013) § 102(24)  
23 (defining “[t]ransferable interest” as “the right, *as initially owned by a person in the person’s*  
24 *capacity as a member*, to receive distributions from a limited liability company”) (emphasis  
25 added).

26 Subsection (a) is not variable, Section 109(12), but does not restrict an initial owner’s  
27 rights to transfer. The operating agreement should delineate those rights. If it does not, sections  
28 103 and 107(c) delineate the rights by extrapolation. See Section 107(c), cmt.

29  
30 **Subsection (b)** – This subsection is not variable, because (i) subsection (a) is not  
31 variable, Section 109(12); and (ii) under subsection (a), the initial owner of a protected series  
32 transferable interest must be either an associated member or the series limited liability company.  
33 *{{NTDC – Should Section 109 specifically refer to this subsection?}}*

34  
35 **Subsection (c)** – Under this provision, it is possible (albeit rarely, if ever, advisable) for a  
36 series limited liability company to have an economic interest in a protected series without having  
37 any governance rights.

38 **EXAMPLE:** Bird LLC (Bird) establishes Asha Protected Series of Bird LLC (Asha),

1 with the protected series transferable interests in Asha allocated as follows: Andy (an  
2 associated member) – 40%; Gretchen (another associated member) – 40%; Bird – 20%.  
3 The operating agreement is silent on how Asha is to be managed. The limited liability  
4 company statute provides, as a default rule, for member-management of a limited liability  
5 company. Under Sections 103 and 107(c) (extrapolation for internal affairs), Asha is  
6 managed by Andy and Gretchen, its associated members (and thus also its protected  
7 series managers). (Section 304(b) makes the company the protected series manager only  
8 when a protected series has no associated members.)  
9

#### 10 **SECTION 304. MANAGEMENT.**

11 (a) A protected series manager in that capacity owes duties only to the protected series  
12 and any associated members of the protected series. A protected series may have simultaneously  
13 more than one protected series manager.

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

16 (c) An associated member of a protected series is by statute an agent for the protected  
17 series with statutory power to bind the protected series to the same extent, if any, that a member  
18 of a limited liability company is by statute an agent for the company with statutory power to bind  
19 the company.

20 (d) An associated member of a protected series of a series limited liability company has  
21 the same rights as any other member of the company to vote on or consent to an amendment to  
22 the company's operating agreement or on any other matter being decided, whether or not the  
23 amendment or other matter affects the interests of the protected series or the associated member.

#### 24 **Comment**

25 This act does not permit a series limited liability company to be an associated member of any of  
26 its protected series. In consequence, when the company acquires a series transferable interest it  
27 obtains no governance rights in the protected series except as provided in the operating  
28 agreement or under Subsection (b).  
29

30 If a protected series has one or more associated members and the operating agreement does not  
31 specify how the protected series is to be managed:

- under Sections 103 and 107(c) and most limited liability company statutes the default rule is management by the associated members; therefore, by extrapolation the associated members are each a protected series manager; and
- extrapolation also provides the details for member management; e.g., how consent or voting rights are allocated and what quantum of consent is necessary to take particular actions.

However, extrapolation can never authorize a protected series to do anything in contravention of the operating agreement. Under most limited liability company statutes, amending the operating agreement requires the affirmative vote or consent of all members. See, e.g., ULLCA (2013) § 407(b)(4)(B), 407(c)(3)(B). The operating agreement may provide special voting rights to associated members of a protected series, but under this act the default rule is contrary. See Subsection (d).

**Subsection (a)** – “Duties” includes all duties, including fiduciary duties. The reference to duty to “any associated members of the protected series” does not override the distinction between direct and derivative claims. Under Sections 103 and 107(c), that distinction will apply at the protected series level. See, e.g., ULLCA (2013) § 801(b) and cmt.

The phrase “in that capacity” is crucially important. A person who is series manager of two protected series of a series limited liability company, or a manager of the company and a series manager of one of the protected series of the company is acting as an agent for two different principals. Absent an agreement with both principals after full disclosure, the agent is in a double bind:

The mere existence of a dual agency violates the duty of undivided loyalty.

Moreover, the dual agent risks specific conflicts of duty as to a myriad of individual issues. The fact that these individual conflicts may be irreconcilable does not justify the agent ignoring one duty or the other. Rather, if any such specific conflict materializes, the agent is destined to be liable to one principal, the other, or both.

Daniel S. Kleinberger, AGENCY, PARTNERSHIP AND LLCs: EXAMPLES AND EXPLANATIONS (4th ed.; Wolters Kluwer; 2012) § 4.1.1 (No Acting for Others with Conflicting Interests).

The following example shows one method of addressing the inevitable conflict.

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

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

(1) the honest belief that the decision serves the best interests of A-Z or one or more protected series of A-Z; and

(2) the reasonable belief that the decision breaches no right under this agreement or [the limited liability company statute] of:

- 1 (i) A-Z;  
2 (ii) a protected series of A-Z; or  
3 (iii) a member of A-Z, whether in the capacity of a member of A-Z  
4 or an associated member of a protected series of A-Z.  
5

6 **Subsection (b)** – This provision applies not only when a protected series is established  
7 but at any other time.

8 EXAMPLE: When established, Protected Series 1 of XYZ, LLC (“PS-1”) has  
9 four associated members. The operating agreement is silent on how PS-1 is to be  
10 managed, and the relevant limited liability company statute provides for member  
11 management as the default rule. Accordingly, PS-1 is member-managed and  
12 remains so as long as PS-1 has any associated members.

13 For various reasons, all four associated members eventually cease to be  
14 associated. Under this subsection, XYZ, LLC becomes the protected series  
15 manager. If later a member becomes an associated member, Subsection (b) no  
16 longer applies.  
17

18 **Subsection (c)** – ULLCA (2006) § 301 eliminated “statutory apparent authority.” See  
19 ULLCA (2013), § 301(a), cmt. However, many limited liability company statutes retain the  
20 concept. This provision provides an associated member the same statutory apparent authority to  
21 bind a protected series that the limited liability company statute provides for a member to bind a  
22 limited liability company.

23 *{{NTDC – The current language replaces the non-agent language from earlier drafts. Query*  
24 *whether the act should provide two alternatives: the current language for the majority of states;*  
25 *the non-agent language for states that have followed ULLCA (2006).}}*  
26

27 **Subsection (d)** – As a default rule, this provision precludes any claim to the protected-  
28 series equivalent of “class voting.”  
29

30 **SECTION 305. RIGHT OF PERSON NOT ASSOCIATED MEMBER OF**  
31 **PROTECTED SERIES TO INFORMATION CONCERNING PROTECTED SERIES.**

32 (a) A member of a series limited liability company which is not an associated member of  
33 a protected series of the company has a right to information concerning the protected series to the  
34 same extent, in the same manner, and under the same conditions that a non-manager member of a  
35 manager-managed limited liability company has a right to information concerning the company  
36 under [the limited liability company statute – see, e.g., Uniform Limited Liability Company Act  
37 (2013), Section 410(b)(2)-(3)].

38 (b) A person formerly an associated member of a protected series has a right to



1 information concerning the protected series to the same extent, in the same manner, and under  
2 the same conditions that a person dissociated as a member of a limited liability company has a  
3 right to information concerning the company under [the limited liability company statute— see,  
4 e.g., Uniform Limited Liability Company Act (2013), Section 410(c)].

5 (c) If an associated member dies, the legal representative of the deceased associated  
6 member has a right to information concerning the protected series to the same extent, in the same  
7 manner, and under the same conditions that the legal representative of a deceased member has a  
8 right to information concerning the company under [the limited liability company statute – see,  
9 e.g., Uniform Limited Liability Company Act (2013), Section 504].

#### 10 **Comment**

11 Sections 103 and 107(c) (extrapolation for internal affairs) provide the information rights for  
12 associated members of a protected series, to the extent the operating agreement does not address  
13 the matter.

#### 14 **[ARTICLE] 4**

### 15 **LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS**

#### 16 **SECTION 401. LIMITATIONS ON LIABILITY.**

17 (a) Subject to subsection (b) and Section 402:

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

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

22 (3) a series limited liability company is not liable, directly or indirectly, by way of  
23 contribution or otherwise, for a debt, obligation, or other liability of a protected series of the  
24 company solely by reason of the company:  
25

1 (A) having established the protected series;

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

3 (C) having the protected series manage the company; or

4 (D) owning a protected series transferable interest in the protected series;

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

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

7 established the protected series or another protected series of the company solely by reason of:

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

9 (B) being or acting as a person managing the company or a protected

10 series manager of another protected series of the company;

11 (C) having the company or another protected series of the company be or

12 act as a protected series manager of the protected series; and

13 (5) a person is not liable, directly or indirectly, by way of contribution or

14 otherwise, for a debt, obligation, or other liability of:

15 (A) a protected series solely by reason of being or acting as an associated

16 member of the protected series, a series manager of the protected series, a member of the series

17 limited liability company that established the protected series, or a person managing the

18 company or by having a series transferable interest in the protected series; or

19 (B) a series limited liability company solely by reason of being or acting

20 as an associated member or protected series manager of a protected series of the company.

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

22 of law and equity, including principles providing rights to creditors or holding a person liable for

23 a debt, obligation, or other liability of another person, which would apply if each protected series

of the series limited liability company were a limited liability company, organized separately from the company that established the protected series and distinct from the company and any other protected series of the company.

#### Comment

This section provides two different types of liability shields:

- the traditional, vertical shields that protect owners and managers from vicarious liability for an organization’s obligations where the vicarious liability is asserted solely by reason of the status of owner or manager, Subsection (a)(5); and
- the novel, horizontal shields that protect a protected series of a series limited liability company from automatic, vicarious liability for the debts, obligations, or other liabilities of the company or another protected series of the company (and provide comparable protection for the company itself), Subsection (a)(1)-(4).

For further explanation, see Prefatory Note, Parts 5-6.

The horizontal shields do not affect the “asset by asset” analysis under Sections 301 and 402.

**Subsection (a)** – This subsection is subject to Section 402 because Section 402 interferes with the non-recourse aspect of the horizontal shields. See Prefatory Note, Parts 5-6.

**Subsection (a)(1)-(4)** – These provisions establish inter alia the “horizontal” shields which are the defining characteristic of a series limited liability company. See Prefatory Note, Part 1. *{{NTDC: Query – combine paragraphs 1 and 3 and 2 and 4?}}*

**Subsections (a)(3)(B), (a)(4)(B)** – These provisions shield only against vicarious liability for a debt, obligation, or other liability of a series limited liability company or a protected series where the vicarious liability is asserted *solely by reason* of a person’s role as a manager. The provisions do not protect against direct liability for tortious conduct. For a detailed discussion of this issue, see ULLCA (2013) § 304(a), cmt., *Shield Inapposite for Claims Arising from a Member’s or Manager’s Own Conduct*.

**Subsection (a)(5)** – This provision establishes the traditional, vertical liability shield.

**Subsection (a)(5)(A)** – This provision establishes the traditional, vertical liability shield with regard to protected series and is based on ULLCA (2013) § 304(a).

**Subsection (a)(5)(B)** – Every limited liability company statute protects a person from vicarious liability for a limited liability company’s obligations where the vicarious liability is asserted solely by reason of the person’s being or acting a member of the company. Most, if not all, limited liability company statutes extend the protection to a person’s status as a manager of a limited liability company. See, e.g., ULLCA (2013) § 304(a). This provision extends the

1 protection to a person in the role of associated member or protected series manager.

2 In the context of non-series limited liability companies, some limited liability company  
3 statutes modify the traditional grounds for piercing (*i.e.*, overcoming the shield) to the following  
4 effect: “The failure of a limited liability company to observe formalities relating to the exercise  
5 of its powers or management of its activities and affairs is not a ground for imposing liability on  
6 a member or manager for a debt, obligation, or other liability of the company.” ULLCA (2013)  
7 § 304(b). This act contains no such language, because such language might be read as  
8 undercutting the strict formalities required to associate an asset with a protected series or series  
9 limited liability company. See Section 301. *{{NTDC – Omitting such language creates an*  
10 *anomaly; for piercing purposes the status of member or manager is treated differently than the*  
11 *status of associated member or series manager.}}*  
12

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

17 This subsection’s specific references to particular categories of “principles of law or  
18 equity” should not be interpreted as limiting the effect of ULLCA (2013) § 111 (stating that  
19 “[u]nless displaced by particular provisions of this [act], the principles of law and equity  
20 supplement this [act]”) (brackets in original) or of comparable provisions in other limited  
21 liability company statutes.  
22

## 23 **SECTION 402. ENFORCEMENT OF CLAIM AGAINST NON-ASSOCIATED** 24 **ASSET.**

25 (a) For purposes of this section, a claimant first seeks enforcement of a claim against an  
26 asset when the claimant first serves process on the owner of the asset, seeking enforcement of the  
27 claim under this section by attachment, levy, or the like.

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

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

31 (A) when enforcement is first sought, the asset is a non-associated asset of  
32 the protected series; or

33 (B) when the liability giving rise to the claim was incurred, the protected  
34 series owned the asset but the asset was a non-associated asset of the protected series.

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

3                               (A) when enforcement is first sought, the asset is a non-associated asset of  
4 the company; or

5                               (B) when the liability giving rise to the claim was incurred, the company  
6 owned the asset but the asset was a non-associated asset of the company.

7                   (3) A claim against a protected series may be enforced against an asset of another  
8 protected series of the company only if:

9                               (A) when enforcement is first sought, the asset is a non-associated asset of  
10 the other protected series; or

11                              (B) when the liability giving rise to the claim was incurred, the other  
12 protected series owned the asset but the asset was a non-associated asset of the other protected  
13 series.

14                   (c) In a proceeding under this section, the party asserting that an asset is an associated  
15 asset of a series limited liability company or a protected series of the company has the burden of  
16 proof on the issue.

17                   (d) A proceeding under this section is an action to enforce a judgment.

18                   (e) This section supplements and does not displace the principles of law and equity  
19 concerning:

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

21                              (2) a lien, mortgage, security interest, or other encumbrance; or

22                              (3) the determination of ownership of property.

1 **Comment**

2  
3 This section creates a novel, important protection for creditors and a very important inducement  
4 in support of Section 301's recordkeeping requirements. Under this section, a creditor may  
5 enforce a claim against one protected series of a series limited liability company by pursuing  
6 non-associated assets owned by the company or another protected series of the company.  
7 Comparable recourse exists for creditors of the company.  
8

9 Put another way: non-associated assets of a protected series of a series limited liability company  
10 are "up for grabs" not only to creditors of the protected series but also to creditors of the  
11 company and creditors of any other protected series of the company. Likewise, non-associated  
12 assets of each protected series of a series limited liability company are "up for grabs" not only to  
13 creditors of the protected series but also to creditors of the company and creditors of other  
14 protected series of the company.  
15

16 *{{NTDC – Open issue: once a claimant seeks enforcement against an asset under this section,*  
17 *may the asset's owner dispose of the asset? If so, are the proceeds then subject to enforcement?*  
18 *If so, what if the proceeds are not of equivalent value?}}*  
19

20 The exposure is "asset by asset" and does not otherwise implicate the internal shields. However,  
21 this section is largely moot to the extent a piercing claim succeeds against an internal shield. For  
22 example, suppose that, as a result of a piercing claim, a series limited liability company is  
23 adjudged liable for a debt of a protected series of the company. Whether an asset of the  
24 company is an associated asset of the company is, at least in the first instance, immaterial to the  
25 judgment creditor. The judgment creditor will be enforcing a judgment against the company  
26 itself; all the company's assets are subject to enforcement regardless of whether associated with  
27 the company. In fact, the judgment debtor would prefer for each asset of the company to be an  
28 associated asset. If so, the asset is not "up for grabs" – i.e., the asset is available only to creditors  
29 of the company, including (given the successful piercing claim) the judgment creditor.  
30

31 This section does not affect the extent to which pre-judgment attachment is available. Other law  
32 will make that determination. Other law also determines what, if any, claims a protected series  
33 or the company has, and against whom, when the protected series or the company loses an asset  
34 under this section due to inadequate recordkeeping. See Prefatory Note, Part 6 (Non-Liability  
35 and Non-Recourse Rules), note 9.  
36

37 **Subsection (a)** – The phrase "attachment, levy or the like" comes from the definition of  
38 "lien creditor" in UCC § 9-102(a)(52).  
39

40 **Subsection (b)** – This subsection applies "asset by asset" and involves analysis at two  
41 points in time: when the claim against the asset is first made and when the liability giving rise to  
42 the claim was incurred.  
43

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- if asset owned but not associated      asset available to claimant
- if asset not owned or owned and associated      availability depends on “when claim first made” analysis

**Subsection (c)** – Various persons might assert associated status, including the owner of the asset, a creditor of the owner of the asset, or the trustee in bankruptcy of the owner of the asset.

**Subsection (e)** – This subsection’s specific references to particular categories of “principles of law or equity” should not be interpreted as limiting the effect of ULLCA (2013) § 111 (stating that “[u]nless displaced by particular provisions of this [act], the principles of law and equity supplement this [act]”) (brackets in original) or of comparable provisions in other limited liability company statutes.

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

(2) the series limited liability company, to the extent it owns a protected series transferable interest of the protected series.

## [ARTICLE] 5

### DISSOLUTION AND WINDING UP OF PROTECTED SERIES

#### SECTION 501. EVENTS CAUSING DISSOLUTION OF PROTECTED SERIES.

A protected series is dissolved, and its activities and affairs must be wound up, upon the:

- (1) dissolution of the series limited liability company that established the protected series;
- (2) occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;
- (3) affirmative vote or consent of all the members; or
- (4) entry by the [the appropriate court] of an order dissolving the protected series on application by:

- (A) an associated member or protected series manager of the protected series:
  - (i) in accord with the rules in Section 103; and
  - (ii) to the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member of or a person managing the company; or
- (B) the company or a member of the company on the grounds that the conduct of all or substantially all the activities and affairs of the protected series is illegal.

**Legislative Note:** *The grounds for dissolution stated in Paragraphs 1 and 4 are non-waivable. Section 109(16). If the law of an enacting state permits the operating agreement to waive judicial dissolution, Section 109(16) should be revised accordingly.*

#### Comment

This section states five grounds for dissolving a protected series, which group into three



categories:

- a mandatory provision consistent with the nature of a protected series (Paragraph 1);
- two facilitative provisions, consistent with the contractual nature of a limited liability company (Paragraphs 2 and 3); and
- two provisions providing for dissolution by order of court (Paragraph 4(A) and (B)).

The section does not provide for dissolution when a protected series has no associated members, because the act allows a protected series to be established and function without associated members. The operating agreement can add such a provision, if desired, as well as sundry other grounds for dissolution.

**Paragraph (1)** – This provision has no analogy at the series limited liability company level, comports with Section 105(c)(1) (stating that a protected series of a series limited liability company may not continue when the company has terminated), and is non-waivable. This provision applies regardless of the cause of the company’s dissolution, including administrative dissolution. *{{NTDC – Need to include provision “resurrecting” protected series if the company’s administrative dissolution is reversed.}}*

**Paragraphs (2) and (3)** – Section 109 does not list these provisions as non-variable, but any variation would be nonsensical – e.g., an operating provision: (i) stating a cause of dissolution while providing that the stated cause does not cause dissolution; or (ii) providing that unanimous consent of the members does not cause dissolution, although unanimous consent suffices to delete the provision.

**Paragraph (3)** – This provision refers to “the affirmative vote or consent of all the members” (emphasis added). Except as provided in the operating agreement, associated members of a protected series have no special right to cause (or prevent) dissolution of the protected series. See Section 304(d).

**Paragraph (4)** – An operating agreement may not vary the grounds stated in this paragraph, but “may determine the forum in which a claim for dissolution ... is determined.” Section 109(16), cmt.

**Paragraph (4)(A)** – This provision analogizes the grounds for court-ordered dissolution of a protected series to the grounds for court-ordered dissolution of a limited liability company.

**Paragraph (4)(B)** – When a protected series acts illegally, any member of a series limited liability company has reason to worry. Accordingly, a member has standing under this provision regardless of whether an associated member of the protected series. (This provision addresses a situation that by definition cannot exist at the limited liability company level and therefore is outside the scope of Paragraph 4(A).)

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

(a) Subject to subsection (b) and in accord with Section 103:

1 (1) a dissolved protected series shall wind up its activities and affairs in the same  
2 manner that a limited liability company winds up its affairs under [the limited liability company  
3 statute]; and

4 (2) judicial supervision or other judicial remedy is available in the winding up of  
5 the protected series to the same extent, in the same manner, and under the same conditions that  
6 apply under [the limited liability company statute] in the winding up of a limited liability  
7 company.

8 (b) When a protected series has completed winding up, the series limited liability  
9 company that established the protected series may deliver to the [Secretary of State] for filing a  
10 statement of designation cancellation stating the name of the protected series and that the  
11 protected series is terminated.

12 (c) A series limited liability company does not complete its winding up until each of its  
13 protected series has completed its winding up.

#### 14 **Comment**

15  
16 **Subsection (a)(1)** – If the limited liability company statute provides for a statement of  
17 dissolution when a limited liability company dissolves, see, e.g., ULLCA (2013) § 702(b)(2)(A),  
18 this paragraph extrapolates that provision to the protected series level. The exclusion from  
19 extrapolation stated in Section 107(d)(2) (precluding any extrapolation that authorizes or requires  
20 a new public filing) does not apply here. By its terms, that exclusion is limited to extrapolation  
21 under Section 107(c).

22  
23 **Subsection (c)** – This subsection overlaps the limited liability company statute’s  
24 provisions on winding up a limited liability company, but only to the extent of treating the  
25 winding up of protected series as part of the winding up of the series limited liability company.  
26 *{{NTDC – Does filing a statement of designation cancellation give constructive notice? If so, we*  
27 *need further language in text, dovetailing with other constructive notice provisions in ULLCA*  
28 *(2013). We also need a Legislative Note recommending deletion if relevant LLC statute has no*  
29 *constructive notice provisions. Same issue re: statement of dissolution provided via*  
30 *extrapolation by Subsection (a)(1).}}*  
31

1 [ARTICLE] 6

2 FOREIGN PROTECTED SERIES

3 SECTION 601. GOVERNING LAW.

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

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

7 (2) relations between the protected series and:

8 (A) the company;

9 (B) another protected series of the company;

10 (C) a member of the company which is not an associated member of the  
11 protected series;

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

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

15 (3) subject to subsection (b) and Section 603:

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

19 (i) an associated member, series transferee, or protected series  
20 manager of the protected series;

21 (ii) a member of the company not an associated member of the  
22 protected series;

23 (iii) a series transferee of another protected series of the company;

(iv) a protected series manager of another protected series of the company;

(v) a person managing the company; or

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

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

(i) having established the protected series;

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

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

(iv) owning a protected series transferable interest in the protected series;

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

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

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

(b) In determining a claim under subsection (a)(3)(B) or (C), a court may apply the law of this state instead of the law of the foreign jurisdiction of the foreign series limited liability

1 company if the court determines that applying the law of the foreign jurisdiction advances a  
2 policy or produces a result repugnant to the public policy of this state. In making the  
3 determination, the court shall consider:

4 (1) the specificity, clarity, and forcefulness with which the law of this state  
5 reflects a contrary public policy;

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

8 (3) any relevant choice-of-law rule of law of this state.

### 9 **Comment**

10 **Subsection (a)(3)** – Each of the subparagraphs in paragraph (3) is subject to two very  
11 important exceptions: Subsection (b), which authorizes a court to choose the forum state’s law  
12 in certain exceptional circumstances; and Section 603, which makes Sections 301 and 402  
13 applicable to a foreign series limited liability company and a foreign protected series.

14  
15 **Subsection (a)(3)(A)** – This provision parallels Section 106(3) and, subject to the above  
16 noted exceptions, states the choice of law rule applicable to matters pertaining to the traditional  
17 shield, as that shield pertains to persons *vis-à-vis* a foreign protected series. The choice of law  
18 rule *vis-à-vis* the vertical shield of a foreign limited liability company appears in the main body  
19 of a state’s limited liability company statute. *See, e.g.,* ULLCA (2013) § 901(a).

20  
21 **Subsection (a)(4)(B) and (C)** – These provisions parallel respectively Section 106(4)  
22 and (5) and, subject to the above noted exceptions, state the choice of law rule for the horizontal  
23 shields within a foreign series limited liability company.

24  
25 **Subsection (b)** – Virtually all, if not all, limited liability company statutes provide that  
26 the law of foreign limited liability company’s jurisdiction of formation governs piercing claims.  
27 *See, e.g.,* ULLCA (2013) § 901(a)(2). This approach reflects the approach of the Uniform  
28 Limited Partnership Act in effect in most states when limited liability company statutes were first  
29 being enacted. *See* Uniform Limited Partnership Act (1976 with 1985 amendments) § 901(i)  
30 (stating that “the law of the state under which a foreign limited partnership is organized govern  
31 its organization and internal affairs and the liability of its limited partners”). According to the  
32 official comment, Section 901 “first appeared in the 1976 Act.”

33 However, the comment provides no explanation for this variation from the original  
34 Uniform Limited Partnership Act of 1916, which relied on common law choice of law principles  
35 for both the “internal affairs doctrine” and piercing claims. *See* *Se. Texas Inns, Inc. v. Prime*  
36 *Hosp. Corp.*, 462 F.3d 666, 672-76 (6th Cir. 2006) (discussing at length which state law to apply  
37 to a claim to pierce the veil of a limited partnership, making no reference to the limited

1 partnership statute of the forum state (Tennessee), determining that “the choice-of-law question  
2 is not outcome-determinative in this case,” and therefore not deciding the issue).

3 In the corporate context, the choice of law has always been a matter of case law. See  
4 *Dassault Falcon Jet Corp. v. Oberflex, Inc.*, 909 F. Supp. 345, 348-49 (M.D.N.C. 1995);  
5 Restatement (Second) of Conflict of Laws (1971) § 307 (“The local law of the state of  
6 incorporation will be applied to determine the existence and extent of a shareholder’s liability to  
7 the corporation for assessments or contributions and to its creditors for corporate debts.”).  
8 Although the Restatement states the rule as invariable, venerable Supreme Court precedent  
9 allows for exceptions. *Pinney v. Nelson*, 183 U.S. 144, 150, 22 S. Ct. 52, 55, 46 L. Ed. 125  
10 (1901) (“Contracting with reference to the laws of that state [not the state of incorporation] [the  
11 shareholders] ...must be assumed to know the provisions of those laws; that by them a personal  
12 liability was cast upon the stockholders in corporations formed under the laws of the state, and  
13 that that same liability was also imposed upon the stockholders of corporations formed under the  
14 laws of other states and doing business within California.”).

15 In the context of such a novel concept as internal shields, the Drafting Committee  
16 determined to revert to common law flexibility rather than merely reiterating a codification that  
17 entered the law of unincorporated organizations without explanation and whose rationale has  
18 never been fully explored.

19 The stated standard – repugnancy – is a high one and consistent with case law from  
20 analogous contexts.

21  
22 **SECTION 602. TRANSACTING OF BUSINESS IN STATE BY FOREIGN**  
23 **LIMITED LIABILITY COMPANY OR FOREIGN PROTECTED SERIES;**

24 **JURISDICTION.** In determining whether a foreign limited liability company or foreign  
25 protected series of the company has transacted business in this state or is subject to the  
26 jurisdiction of the courts of this state:

27 (1) the activities and affairs of the company are not attributable to a protected series of  
28 the company solely because the company established the protected series; and(2) the activities  
29 and affairs of a protected series are not attributable to the company or another protected series of  
30 the company solely because the company established the protected series or the other protected  
31 series.

32 *{{NTDC – This section states a non-attribution rule that protects not only foreign protected*  
33 *series but also foreign series limited liability companies. Query – does the latter protection*  
34 *belong in the limited liability company statute, with a Legislative Note to explain?}}*  
35

**SECTION 603. APPLICATION OF SECTIONS 301 AND 402 TO FOREIGN SERIES LIMITED LIABILITY COMPANY AND FOREIGN PROTECTED SERIES.**

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

### Comment

Other law determines whether an asset is located in this state.

## SECTION 604. REGISTRATION OF FOREIGN PROTECTED SERIES.

(a) Except as otherwise provided in this section and subject to Section 602, the law of this state governing the registration of a foreign limited liability company to do business in this state applies to a foreign protected series as if the foreign protected series were a foreign limited liability company organized separately from the foreign series limited liability company that established the foreign protected series and distinct from the foreign company and any other foreign protected series of the foreign company.

(b) An application by a foreign protected series for registration to do business in this state must include:

(1) the name and jurisdiction of formation of the foreign series limited liability company that established the foreign protected series applying for registration; and

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

(c) The name of a foreign protected series applying for registration or registered to do

business in this state must comply with Section 202. A foreign protected series may comply with Section 202 pursuant to [fictitious name statute].

(d) The requirement in [cite to the relevant provision the limited liability company statute – see, e.g., Uniform Limited Liability Company Act (2013), Section 904] to amend a statement of registration to update information applies to the information required by subsection (b).

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

#### Comment

**Subsection (a)** – Among the provisions made applicable by this subsection are the process used and the information required for registration to do business, the law governing annual or biennial reports, and the law governing statements of good standing. Also made applicable is the “no greater powers” rule contained in many limited liability company statutes – e.g., ULLCA § 901(c) (“Registration of a foreign limited liability company to do business in this state does not authorize the foreign company to engage in any activities and affairs or exercise any power that a limited liability company may not engage in or exercise in this state.”).

Because this subsection treats each foreign protected series as if it were a separate foreign limited liability company, there is no requirement that all registered foreign protected series of a foreign series limited liability company have the same agent for service of process. *Contrast* Section 203(a) (providing that the registered agent of a series limited liability company is the registered agent for each protected series established by company). *{{NTDC – open issue: how to address statutes which require a statement of good standing from the home jurisdiction of a registrant limited liability company when the home jurisdiction does not provide for a statement of good standing pertaining to a protected series.}}*

Section 602 contains non-attribution rules applicable when determining whether a foreign series limited liability company or foreign protected series is doing business in this state.

**Subsection (b)(2)** – This provision is most easily understood with reference to Section 605(a), which requires substantial disclosures when a foreign series limited liability company or foreign protected series becomes party to an adjudicative proceeding. Registration to do business does not require the same disclosure but does require the applicant to identify an individual who knows the information contemplated by Section 605.

**Subsection (c)** – Section 202 requires that the name of a protected series either begin or end with the name of the series limited liability company. Many limited liability company statutes have a provision addressing the problem of a noncomplying name of foreign limited liability company that is applying for registration – e.g., ULLCA § 906. Subsection (a) makes such provisions applicable to a foreign protected series. A foreign protected series can also use a



1 state's fictitious name statute.

2 If a foreign series limited liability company changes its name, the foreign company will  
3 have to change the name used in this state by any of the foreign company's protected series  
4 registered in this state. See Section 202(c).

5  
6 **SECTION 605. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED**  
7 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES SUBJECT TO**  
8 **PROCEEDING.**

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

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

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

15 (B) each protected series manager of and an agent for service of process  
16 for each foreign protected series of the company; and

17 (2) a foreign protected series shall disclose to each other party the name, street,  
18 mailing, and electronic mail address of:

19 (A) the foreign series limited liability company that established the foreign  
20 protected series, each person managing the company, and an agent for service of process for the  
21 company; and

22 (B) each other foreign protected series, if any, and the protected series  
23 manager of and an agent for service of process for each other protected series.

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

26 If the tribunal rules in favor of its jurisdiction, the tolling ends.

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

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

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

#### **Comment**

In contrast to Section 604(b)(2), this section requires disclosure of information, not merely the identification of an individual who knows the information.

**Subsection (a)** – Arbitration is an adjudicative tribunal. *{{NTDC – open issues: how to determine whether an arbitration proceeding is located in this state; whether, given that arbitration is consensual process, the protections of this section are unnecessary.}}*

### **[ARTICLE] 7**

#### **MISCELLANEOUS PROVISIONS**

**SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

#### **Comment**

This section responds to specific language of the Electronic Signatures in Global and

1 National Commerce Act and is designed to avoid preemption of state law under that federal  
2 legislation.

3  
4 **SECTION 703. APPLICATION TO EXISTING RELATIONSHIPS.**

5 Details TBD. As of October 14, 2015:

- 6
  - long drag-in period – 2 years
  - authorize an existing series LLC to opt in before the drag-in date
  - authorize those with managerial authority to comply with this act’s recordkeeping

9 and filing requirements without need for member approval (domestic only)

10 **Comment**

11  
12 Article 5 of this act contains novel provisions affecting the internal shields of foreign  
13 protected series. *See* the Legislative Note to Section 604.

14  
15 **SECTION 704. SAVINGS CLAUSE.** This [act] does not affect an action commenced,  
16 proceeding brought, or right accrued before [the effective date of this [act]].

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

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

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

24 (a) ...

25 (b) ...

26 (c) ...

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