

DRAFT
FOR DISCUSSION ONLY

LIMITED LIABILITY COMPANY PROTECTED SERIES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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Act Addressing Entity Transactions**

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ON UNIFORM STATE LAWS

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January 31, 2017

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PROTECTED SERIES ACT**

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LIMITED LIABILITY COMPANY PROTECTED SERIES ACT

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1 **LIMITED LIABILITY COMPANY PROTECTED SERIES ACT**

2 **[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 **SECTION 102. DEFINITIONS.** In this [act]:

7 (1) “Asset” means property:

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

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

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

11 (3) “Associated member” means a member that meets the requirements under Section
12 302.

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

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

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

22 (7) “Person” has the meaning in [cite the definition of “person” in this state’s limited
23 liability company statute. The term includes a protected series, whether referred to as a protected

1 series or “series.

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

4 (9) “Protected series manager” means a person under whose authority the powers of a
5 protected series are exercised and under whose direction the activities and affairs of the protected
6 series are managed under the operating agreement, this [act], and [cite this state’s limited liability
7 company statute].

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

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

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

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

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

18 (2) another protected series of the company;

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

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

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

1 **SECTION 104. POWERS AND DURATION OF PROTECTED SERIES.**

2 (a) A protected series has the capacity to sue and be sued in its own name.

3 (b) Except as otherwise provided in subsection (c), a protected series has the same
4 powers that a limited liability company has under [cite the provision of this state’s limited
5 liability company statute specifying a limited liability company’s powers].

6 (c) A protected series may not:

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

9 (2) be a member of the company;

10 (3) establish a protected series;

11 (4) {{except as provided in Section 601,}} be a party to or established as a result
12 of a merger, interest exchange, conversion, domestication, or comparable transaction.

13 (5) except as permitted by law of this state other than this [act], do anything or
14 have any purpose the law of this state other than this [act] prohibits a limited liability company
15 from doing or having[.]; or]

16 (6)].

17 **SECTION 105. GOVERNING LAW; CHOICE OF LAW.** The law of this state
18 governs:

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

20 (2) the relations between a protected series and each of the following:

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

22 (B) another protected series of the company;

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

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

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

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

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

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

11 (C) a protected series manager that is not a protected series manager of the
12 protected series;

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

15 (E) a person managing the company; or

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

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

20 (A) having established the protected series;

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

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

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

1 (5) the liability of a protected series for a debt, obligation, or other liability of the series
2 limited liability company that established the protected series for a debt, obligation, or other
3 liability of another protected series of the company if the debt, obligation, or liability is asserted
4 solely by reason of:

5 (A) the protected series:

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

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

10 (B) the company owning a protected series transferable interest of the protected
11 series.

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

14 (a) Except as otherwise provided in this section and subject to Section 107, the operating
15 agreement of a series limited liability company governs:

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

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

19 (3) relations between:

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

22 (B) another person in the other person's capacity as:

23 (i) a member of the company which is not an associated member of

1 the protected series;

2 (ii) a protected series transferee or protected series manager of another
3 protected series; or

4 (iii) a transferee of the company.

5 (b) If [the limited liability company statute] restricts the power of an operating
6 agreement, the restriction applies to a matter under this [act] according to the rules in Section
7 108.

8 (c) If law of this [state] other than this [act] contains a prohibition, limitation,
9 requirement, condition, or other constraint pertaining to a limited liability company, the
10 constraint applies according to the rules in Section 108.

11 (d) If the operating agreement of a series limited liability company does not provide for a
12 matter described in subsection (a), this [act], other than Section 108, governs the matter. If
13 neither the operating agreement nor the provision of this [act] other than Section 108 provides
14 for a matter described in subsection (a), [cite this state's limited liability company statute]
15 governs the matter according to the rules in Section 108.

16 (e) Subsection (d) does not apply if its application would contradict Section 107.

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

18 An operating agreement may not vary:

19 (1) this section;

20 (2) the rules in Section 108, except as they apply under Section 106(c);

21 (3) the nature of a protected series as stated in Section 103;

22 (4) the capacity of a protected series under Section 104(a) ;

23 (5) Section 104(b) to provide a protected series a power in addition to the powers

1 provided to a limited liability company under [cite this state’s limited liability company statute];
2 (6) the limitations in Section 104(c) on the powers of a protected series;
3 (7) the law applicable under Section 105;
4 (8) the requirements and procedures under Section 201 for establishing a protected series,
5 except that the operating agreement may vary the manner in which a limited liability company
6 approves establishing a protected series;
7 (9) the requirements in Section 202;
8 (10) the requirements and procedures in Section 301 for making an asset an associated
9 asset;
10 (11) the requirements under Section 302 that:
11 (A) a person be a member of a series limited liability company to be an associated
12 member of a protected series of the company; and
13 (B) a person’s dissociation as a member causes the person to cease to be an
14 associated member of any protected series of the company;
15 (12) the requirement under Section 303(a) that a protected series transferable interest
16 must be owned initially by an associated member of the protected series or the series limited
17 liability company that established the protected series;
18 (13) the principles identified in Section 401(c) as governing a claim to disregard a
19 limitation of liability stated in Section 401(a);
20 (14) the rights under Section 403 of a judgment creditor;
21 (15) the procedures and requirements under Section 403 to enforce a claim against a non-
22 associated asset;
23 (16) the circumstances in Section 501(1) and (4) causing dissolution of a protected series;

- 1 (17) Section 502, except to designate a different person to manage winding up;
- 2 (18) {[Article] 6, except [TBD]}
- 3 (19) [Article] 7;
- 4 (20) [Article 8]; or .
- 5 (21) a provision of this [act] pertaining to:
 - 6 (A) registered agents; or
 - 7 (B) the [Secretary of State], including provisions pertaining to records authorized
 - 8 or required to be delivered to the [Secretary of State] for filing under this [act].

9 **SECTION 108. RULES FOR APPLYING [LIMITED LIABILITY COMPANY**
10 **STATUTE] TO [ACT].**

11 (a) Subject to subsection (b) and for applying Sections 106, 304(d),501(4)(A)(i), and
12 502(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:

15 (A) organized separately from the series limited liability company that
16 established the protected series; and

17 (B) distinct from the series limited liability company and any other
18 protected series of the company.

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

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

23 (4) A protected series transferable interest of the protected series is deemed to be

1 a transferable interest of the company deemed to exist under paragraph (1).

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

4 (6) Any asset of the protected series is deemed to be an asset of the company
5 deemed to exist under paragraph (1), whether or not the asset is an associated asset of the
6 protected series;

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

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

10 (1) contradict Section 107 or [cite provision of this state's limited liability
11 company statute limiting the power of an operating agreement]; or

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

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

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

18 **[ARTICLE] 2**

19 **ESTABLISHING PROTECTED SERIES**

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

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

23 (b) To establish a protected series, a limited liability company must deliver to the

1 [Secretary of State] for filing a protected series designation, signed by the company, stating the
2 name of the company and the name of the protected series to be established.

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

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

12 **SECTION 202. NAME.**

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

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

17 (1) begin with the name of the company, including any word or abbreviation
18 required by [cite the “designator” provision of this state’s limited liability company statute or
19 other statute of this state imposing name requirements on a limited liability company] to
20 designate that the company is a limited liability company; and

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

23 (c) If a series limited liability company changes its name, the company shall deliver to the

1 [Secretary of State] for filing a statement of designation change for each of the company's
2 protected series, changing the name of each protected series to comply with this section.

3 **SECTION 203. REGISTERED AGENT.**

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

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

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

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

14 (e) A person that ceases to be the registered agent for a protected series of a series limited
15 liability company, except on termination of the protected series, ceases to be the registered agent
16 of the company and any other protected series of the company.

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

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

23 (a) A protected series may be served with a 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 to a person under subsection (b) is effective whether or not the summons and
15 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 **SECTION 205. CERTIFICATE OF GOOD STANDING FOR PROTECTED**
20 **SERIES.**

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

23 (1) the name of the protected series and the name of the series limited liability

1 company that established the protected series;

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

4 (3) the date the certificate took effect;

5 (4) if a statement of designation change pertaining to the protected series has
6 taken effect, the effective date and contents of the statement;

7 (5) if a statement of protected series merger pertaining to the protected series has
8 taken effect, the effective date and contents of the statement

9 (6) that a statement of termination of the protected series has not been filed;

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

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

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

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

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

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

22 **SECTION 206. INFORMATION REQUIRED IN [ANNUAL] [BIENNIAL]**

23 **REPORT.** The [annual][biennial] report that [cite the provision of this state's limited liability

1 company statute pertaining to annual or biennial report] requires be delivered to the [Secretary of
2 State] for filing must, for a series limited liability company, include the name of each protected
3 series of the company. Failure of the company to include the name of a protected series does not
4 dissolve or otherwise affect the protected series but prevents issuance of a certificate of good
5 standing pertaining to the protected series.

6 **[ARTICLE] 3**

7 **ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED SERIES**

8 **TRANSFERABLE INTEREST; MANAGEMENT**

9 **SECTION 301. ASSOCIATED ASSET.**

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

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

12 (b) An asset of a protected series is an associated asset of the protected series only if the
13 protected series creates and maintains records that state the name of the protected series and describe
14 the asset with sufficient specificity to permit a disinterested, reasonable individual to:

15 (1) identify the asset and distinguish it from any other assets of the protected series,
16 any assets of the series limited liability company that established the protected series, and any assets
17 of any other protected series of the company;

18 (2) determine when and from what person the protected series acquired the asset; and

19 (3) if the protected series acquired the asset from the company or another protected
20 series of the company, determine any consideration paid, the payer, and the payee.

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

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

3 (2) determine when and from what person the company acquired the asset; and

4 (3) if the company acquired the asset from a protected series of the company,
5 determine any consideration paid, the payer, and the payee.

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

9 (e) To the extent permitted by law of this [state] other than this [act] and subject to
10 subsections (a), (b), and (c), a series limited liability company or protected series of the
11 company may hold an associated asset directly or indirectly, through a representative, nominee,
12 or similar arrangement,*{{but a protected series may not hold an associated asset in the name of*
13 *the company or another protected series of the company, and the company may not hold an*
14 *associated asset in the name of a protected series of the company}}*.

15 **SECTION 302. MEMBERSHIP REQUIRED TO BE ASSOCIATED MEMBER;**
16 **OPERATING AGREEMENT TO SPECIFY ASSOCIATED MEMBER.**

17 (a) Only a member of a series limited liability company may be an associated member of
18 a protected series of the company. If a person that is an associated member of a protected series
19 is dissociated from the series limited liability company, the person ceases to be an associated
20 member of the protected series.

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

- 1 (1) identifies the member as an associated member of the protected series; and
2 (2) states any protected series transferable interest the associated member has in
3 connection with becoming or being an associated member.

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

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

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

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

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

16 **SECTION 304. MANAGEMENT.**

17 (a) A protected series may have more than one protected series manager. Whenever a
18 protected series has no associated members, the series limited liability company is the protected
19 series manager.

20 (b) Solely by reason of being or acting as a series manager for a protected series, a person
21 owes no duty to:

- 22 (1) the series limited liability company that established the protected series;
23 (2) another protected series of the company; or

1 (3) another person in the other person's capacity as:

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

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

6 (C) a transferee of the company.

7 (c) An associated member of a protected series has the same rights as any other member
8 of the series limited liability company to vote on or consent to an amendment to the company's
9 operating agreement or any other matter being decided by the members, whether or not the
10 amendment or matter affects the interests of the protected series or the associated member.

11 (d) [Cite the derivative claim provisions of this state's limited liability company statute]
12 apply to a protected series according to the rules in Section 108.

13 (e) An associated member of a protected series is an agent for the protected series with
14 power to bind the protected series to the same extent that a member of a limited liability
15 company is under [cite the statutory apparent authority provision of this state's limited liability
16 company statute] an agent for the company with power to bind the company.]

17 **SECTION 305. RIGHT OF PERSON NOT ASSOCIATED MEMBER OF**
18 **PROTECTED SERIES TO INFORMATION CONCERNING PROTECTED SERIES.**

19 (a) A member of a series limited liability company which is not an associated member of
20 a protected series of the company has a right to information concerning the protected series to the
21 same extent, in the same manner, and under the same conditions that a member that is not a
22 manager of a manager-managed limited liability company has a right to information concerning
23 the company under [cite provisions of the limited liability company statute which provide

1 information rights for non-manager members of a manager-managed limited liability company].

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

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

13 **[ARTICLE] 4**

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

15 **SECTION 401. LIMITATIONS ON LIABILITY.**

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

18 (1) a protected series solely by reason of being or acting as an associated member
19 of the protected series, a series manager of the protected series, a member of the series limited
20 liability company that established the protected series, or a person managing the company or by
21 having a series transferable interest in the protected series; or

22 (2) a series limited liability company solely by reason of being or acting as an
23 associated member or protected series manager of a protected series of the company.

1 (b) Subject to subsection (c) and Section 402:

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

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

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

9 (A) having established the protected series;

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

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

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

13 and

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

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

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

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

22 (c) A claim seeking to disregard a limitation in subsections (a) or (b) is governed by the
23 principles of law and equity, including a principle providing rights to creditors or holding a

1 person liable for a debt, obligation, or other liability of another person, which would apply if
2 each protected series of the series limited liability company were a limited liability company:

3 (1) organized separately from the company that established the protected series;

4 and;

5 (2) distinct from the company and any other protected series of the company.

6 (d) Subsection (c) applies to a claim seeking to disregard a limitation of liability
7 applicable to a foreign series limited liability company or foreign protected series which is
8 comparable to a limitation stated in subsection (a) or (b), if:

9 (1) the claimant is a resident of this state or doing business or registered to do
10 business in this state; or

11 (2) the claim is to establish or enforce a liability arising under law of this state or
12 from an act or omission in this state.

13 **SECTION 402. REMEDIES OF JUDGMENT CREDITOR OF ASSOCIATED**

14 **MEMBER OR PROTECTED SERIES TRANSFEREE.** [Cite provisions of this state's

15 limited liability company statute providing or restricting remedies available to a judgment

16 creditor of a member of a limited liability company or transferee] applies to a judgment creditor

17 of:

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

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

21 **SECTION 403. ENFORCEMENT OF JUDGMENT AGAINST NON-**

22 **ASSOCIATED ASSET.**

23 (a) In this section, a claimant first seeks enforcement of a judgment against an asset of a

1 series limited liability company or protected series of the company when the claimant first serves
2 process on the company or protected series seeking enforcement of the judgment against the
3 asset under this section by attachment, levy, lien, or the like.

4 (b) In addition to any other remedy provided by law or equity, a judgment against a series
5 limited liability company or a protected series may be enforced according to the following rules:

6 (1) A judgment against a series limited liability company may be enforced against
7 an asset of a protected series of the company if:

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

10 (B) when the liability giving rise to the claim was incurred, the asset was a
11 non-associated asset of the protected series.

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

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

16 (B) when the liability giving rise to the claim was incurred, the asset was a
17 non-associated asset of the company.

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

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

22 (B) when the liability giving rise to the claim was incurred, the asset was a
23 non-associated asset of the other protected series.

1 (c) The rules in subsection (b) apply in a proceeding seeking a prejudgment remedy by
2 attachment, levy, lien, or the like, as permitted by applicable law, even though no judgment has
3 been ordered.

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

7 (e) A proceeding under this section is to enforce a judgment.

8 **[ARTICLE] 5**

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

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

11 A protected series is dissolved, and its activities and affairs must be wound up, only on:

12 (1) dissolution of the series limited liability company that established the protected series;

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

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

16 (4) entry by the [appropriate court] of an order dissolving the protected series on
17 application by:

18 (A) an associated member or protected series manager of the protected series:

19 (i) in accord with Section 108; and

20 (ii) to the same extent, in the same manner, and on the same grounds the
21 court would enter an order dissolving a limited liability company on application by a member of
22 or a person managing the company; or

23 (B) the company or a member of the company on the ground that the conduct of

1 all or substantially all the activities and affairs of the protected series is illegal.

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

3 (a) Subject to subsection (b) and in accord with Section 108:

4 (1) a dissolved protected series shall wind up its activities and affairs in the same
5 manner that a limited liability company winds up its activities and affairs under [cite the winding
6 up provisions of the limited liability company statute]; and

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

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

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

17 **SECTION 503. EFFECT OF REINSTATEMENT OF SERIES LIMITED**
18 **LIABILITY COMPANY OR REVOCATION OF VOLUNTARY DISSOLUTION.** If a
19 series limited liability company that has been administratively dissolved is reinstated, or a
20 company that voluntarily dissolved rescinds its dissolution:

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

22 (2) [Cite the provisions of this state’s limited liability company statute stating the results
23 of the reinstatement or rescission] apply to each protected series of the company in accord with

1 Section 108.

2 [ARTICLE] 6

3 ENTITY TRANSACTIONS

4 SECTION 601. [reserved, pending decision at February internet meeting of the
5 drafting committee]

6 SECTION 602. RESTRICTIONS ON ENTITY TRANSACTION INVOLVING
7 PROTECTED SERIES.

8 (a) A series limited liability company may not be:

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

11 (2) created by a merger;² or

12 (3) except as otherwise provided in Section 601³ and subsection (b), a party to a
13 merger.⁴

14 (b) A series limited liability company may be a party to a merger⁵ under [cite the

¹ ULLCA (2013) §1001 defines these terms.

² A series limited liability company formed by a merger would not be able to make the filings contemplated in subsection (b)(3) and (4).

³ Section 601 is the merger in/merger out provision discussed at the end of the Internet Meeting on November 30, 2016. Obviously, if the Drafting Committee decides not to allow such mergers, the reference will be deleted.

⁴ This provision does not preclude a series limited liability company being involved in a triangular merger as the non-party, and the company could provide consideration in the form of interests in one of its protected series. If the consideration were a full interest (i.e., the recipient would be an associated member of the protected series), the recipient would have to be a member of the company or become one as part of the overall transaction. See UPSA § 302(a) (“Only a member of a series limited liability company may be an associated member of a protected series of the company.”) The requirement does not apply to the extent the consideration is merely a series transferable interest. However, a limited liability company cannot create a series transferable interest *ab initio*. See Section 303(a).

⁵ This section does not authorize the merger of protected series. Thus to “move” a protected series from Series LLC Frost to be a protected series of the surviving Series LLC Norton will

1 provisions of this state’s limited liability company statute pertaining to mergers] and according
2 to the following rules:

3 (1) Each other party to the merger must be a domestic limited liability company
4 {{or a foreign limited liability company organized under a statute that authorizes the foreign
5 company to establish foreign protected series}}.⁶

6 (2) The plan of merger must:

7 (A) identify any protected series of the company which will be
8 established,⁷ continued in existence, or terminated when the merger takes effect; and

9 (B) for any protected series of the company which will be terminated
10 when the merger takes effect, state any consideration to be paid to associated members and
11 protected series transferees of the protected series on account of the merger; and

12 (C) for any protected series of the company which will continue in
13 existence after the merger takes effect, state:

14 (i) any change that will occur when the merger takes effect in the

require the would-be “movant” to be terminated under Frost and then established under Norton. For protection of Frost’s creditors (and our mechanism to avoid having to require Frost to pay off all its creditors), see subsection (b)(4)(B)(i).

⁶ At its internet meeting on 1/18/17, the Drafting Committee approved the concept reflected in Paragraph 1 *without the language within the braces*. That language reflects what the Reporter understands to be the “widening of the channel” sought by Commissioner Jacobs.

⁷ If as a result of a merger the surviving limited liability company establishes a protected series with any associated members, the merger must effect an appropriate amendment to the company’s operating agreement. UPSA § 302(b) (“A member of a series limited liability company becomes an associated member of a protected series of the company when the operating agreement or a procedure established by the agreement: (1) identifies the member as an associated member of the protected series; and (2) states what, if any, protected series transferable interest the associated member has in connection with becoming or being an associated member.”) Such an amendment would be part of the plan of merger, according to ULLCA § 1022(a)(4)(B) (plan of merger to include ... any proposed amendments to...[the limited liability company’s] private organic rules that are, or are proposed to be, in a record”).

1 rights of associated members or series transferees of the protected series; and

2 (ii) any consideration to be paid to associated members or
3 protected series transferees of the protected series on account of any change that will occur.

4 (3) If a protected series of the company is to be established when the merger takes
5 effect, the company must deliver to the [Secretary of State] for filing a protected series
6 designation for the protected series, as an attachment to the statement of merger, to take effect on
7 the same date and at the same time the statement takes effect.

8 (4) If a protected series of the company will not exist when the merger takes
9 effect:

10 (A) the company must deliver to the [Secretary of State] for filing a
11 statement of termination for the protected series,⁸ as an attachment to the statement of merger, to
12 take effect on the same date and at the same time the statement takes effect; and

13 ⁹(B) when the merger takes effect:

14 (i) all debts, obligations, and other liabilities of the protected series
15 are debts, obligations, and liabilities of the surviving limited liability company { {or foreign
16 limited liability company} };¹⁰ and

17 (ii) except as otherwise provided by law or the plan of merger, all
18 the rights, privileges, immunities, powers, and purposes of the protected series vest in the
19 surviving limited liability company { {or foreign limited liability company} }.¹¹

⁸ Because a merger under this section cannot effect the merger of a protected series, a statement of termination is the appropriate record to be delivered for filing.

⁹ Source: ULLCA (2013) § 1026(a)(4).

¹⁰ See note 6.

¹¹ See note 6.

1 [ARTICLE] 7

2 FOREIGN PROTECTED SERIES

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

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

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

7 (A) the company;

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

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

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

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

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

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

19 (B) a member of the company not an associated member of the foreign protected
20 series;

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

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

23 (E) a person managing the company; or

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

2 (4) subject to Sections 401(d) and 603:

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

5 (i) having established the protected series;

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

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

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

9 and

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

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

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

18 **SECTION 702. TRANSACTING BUSINESS IN STATE BY FOREIGN LIMITED**
19 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES; JURISDICTION.** In

20 determining whether a foreign limited liability company or foreign protected series of the
21 company has transacted business in this state or is subject to the jurisdiction of the courts of this
22 state:

23 (1) the activities and affairs of the company are not attributable to a protected series of

1 the company solely because the company established the protected series; and

2 (2) the activities and affairs of a protected series are not attributable to the company or
3 another protected series of the company solely because the company established the protected
4 series or the other protected series.

5 **SECTION 703. APPLICATION OF SECTION 403 TO FOREIGN SERIES**

6 **LIMITED LIABILITY COMPANY AND FOREIGN PROTECTED SERIES.** Section 403
7 applies to an asset of a foreign series limited liability company or foreign protected series if:

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

9 (2) the claimant is a resident of this state or doing business or registered to do business in
10 this state, or the claim under Section 403 is to enforce a judgment pertaining to a liability arising
11 from the law of this state or an act or omission in this state; and

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

14 **SECTION 704. REGISTRATION OF FOREIGN PROTECTED SERIES.**

15 (a) Except as otherwise provided in this section and subject to Section 602, the law of this
16 state governing the registration of a foreign limited liability company to do business in this state
17 applies to a foreign protected series as if the foreign protected series were a foreign limited
18 liability company:

19 (1) organized separately from the foreign series limited liability company that
20 established the foreign protected series; and

21 (2) distinct from the foreign company and any other foreign protected series of the
22 foreign company.

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

1 must include:

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

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

8 (c) The name of a foreign protected series applying for registration or registered to do
9 business in this state must comply with Section 202. A foreign protected series may comply
10 with Section 202 using [cite this state's fictitious name statute].

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

14 **SECTION 705. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED**
15 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES PARTY TO**
16 **PROCEEDING.**

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

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

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

23 (B) each protected series manager of and an agent for service of process

1 for each foreign protected series of the company; and

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

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

7 (B) any other foreign protected series of the company and the protected
8 series manager of and an agent for service of process for any other foreign protected series.

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

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

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

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

17 **[ARTICLE] 8**

18 **MISCELLANEOUS PROVISIONS**

19 **SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
20 applying and construing this uniform act, consideration must be given to the need to promote
21 uniformity of the law with respect to its subject matter among states that enact it.

22 **SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
23 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the

1 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
2 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
3 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
4 U.S.C. Section 7003(b).

5 **[SECTION 803. TRANSITIONAL PROVISIONS.]**

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

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

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

12 (b) On and after [all-inclusive date], this [act] governs all series limited liability
13 companies and protected series.

14 (c) If a series limited liability company elects under subsection (a)(2) to be subject to this
15 [act]:

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

18 (2) the persons managing the company have the right to sign and deliver to the
19 [Secretary of State] for filing any record necessary to comply with this [act], whether the record
20 pertains to the company, a protected series of the company, or both.

21 (d) Before [one year after the effective date of this [act]], Section 603 applies only to a
22 foreign protected series that was established on or after [the effective date of this [act]] and a
23 foreign limited liability company that became a foreign series limited liability company on or

1 after [the effective date of this [act]].

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

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

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

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

11 (a) ...

12 (b) ...

13 (c) ...

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