

Document Beta
for 11-30-16 UPSA Internet meeting
(remaining provisions of Article 6)

11-28-16

not all comments and legislative notes have been revised

1 **SECTION 602. TRANSACTING OF BUSINESS IN STATE BY FOREIGN**

2 **LIMITED LIABILITY COMPANY OR FOREIGN PROTECTED SERIES;**

3 **JURISDICTION.** In determining whether a foreign limited liability company or foreign

4 protected series of the company has transacted business in this state or is subject to the

5 jurisdiction of the courts of this state:

6 (1) the activities and affairs of the company are not attributable to a protected series of
7 the company solely because the company established the protected series; and

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

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

14
15 **SECTION 603. See separate document containing Sections 401, 601, and 603**

16
17 **SECTION 604. REGISTRATION OF FOREIGN PROTECTED SERIES.**

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

22 established the foreign protected series and distinct from the foreign company and any other
23 foreign protected series of the foreign company.

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

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

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

32 (c) The name of a foreign protected series applying for registration or registered to do
33 business in this state must comply with Section 202. A foreign protected series may comply
34 with Section 202 pursuant to [fictitious name statute].

35 (d) The requirement in [cite to the relevant provision the limited liability company
36 statute] to amend a statement of registration to update information applies to the information
37 required by subsection (b).

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

43 **Comment**

44
45 **Subsection (a)** – Among the provisions made applicable by this subsection are the
46 process used and the information required for registration to do business, the law governing
47 annual or biennial reports, and the law governing statements of good standing. Also made
48 applicable is the “no greater powers” rule contained in many limited liability company statutes –

49 e.g., ULLCA § 901(c) (“Registration of a foreign limited liability company to do business in this
50 state does not authorize the foreign company to engage in any activities and affairs or exercise
51 any power that a limited liability company may not engage in or exercise in this state.”).

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

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

62
63 **Subsection (b)(2)** – This provision is most easily understood with reference to Section
64 605(a), which requires substantial disclosures when a foreign series limited liability company or
65 foreign protected series becomes party to an adjudicative proceeding. Registration to do
66 business does not require the same disclosure but does require the applicant to identify an
67 individual who knows the information contemplated by Section 605.

68
69 **Subsection (c)** – Section 202 requires that the name of a protected series either begin or
70 end with the name of the series limited liability company. Many limited liability company
71 statutes have a provision addressing the problem of a noncomplying name of foreign limited
72 liability company that is applying for registration – e.g., ULLCA § 906. Subsection (a) makes
73 such provisions applicable to a foreign protected series. A foreign protected series can also use a
74 state’s fictitious name statute.

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

78
79 **SECTION 605. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED**
80 **LIABILITY COMPANY OR FOREIGN PROTECTED SERIES PARTY TO**
81 **PROCEEDING.**

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

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

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

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

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

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

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

97 (b) The time to make disclosure under subsection (a) is tolled if the foreign series limited
98 liability company or foreign protected series challenges the personal jurisdiction of the tribunal.
99 If the tribunal rules in favor of its jurisdiction, the tolling ends.

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

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

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

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

110

111 **Subsection (a)** – Arbitration is an adjudicative tribunal. *{{NTDC – open issues; how to*
112 *determine whether an arbitration proceeding is located in this state; whether, given that*
113 *arbitration is consensual process, the protections of this section are unnecessary; whether this*
114 *section should apply to criminal proceedings, in which the government has manifold means of*
115 *gathering information [on reflection, the Reporter advises deleting “criminal”]; same issue w/r/t*
116 *administrative proceedings.}}*

117

118 **Subsection (c)** – If the proceeding is in federal court and the court denies a motion under
119 paragraph (1), the separate proceeding will necessarily be in state court. (This act cannot confer
120 jurisdiction on a federal court.)

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