

DRAFT  
FOR DISCUSSION ONLY

**SERIES OF UNINCORPORATED BUSINESS  
ENTITIES ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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January 29-31, 2016 Drafting Committee Meeting

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*The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporters' notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

January 14, 2016

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PROTECTED SERIES ACT**

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**SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

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1 **REPORTER’S INTRODUCTORY NOTE**

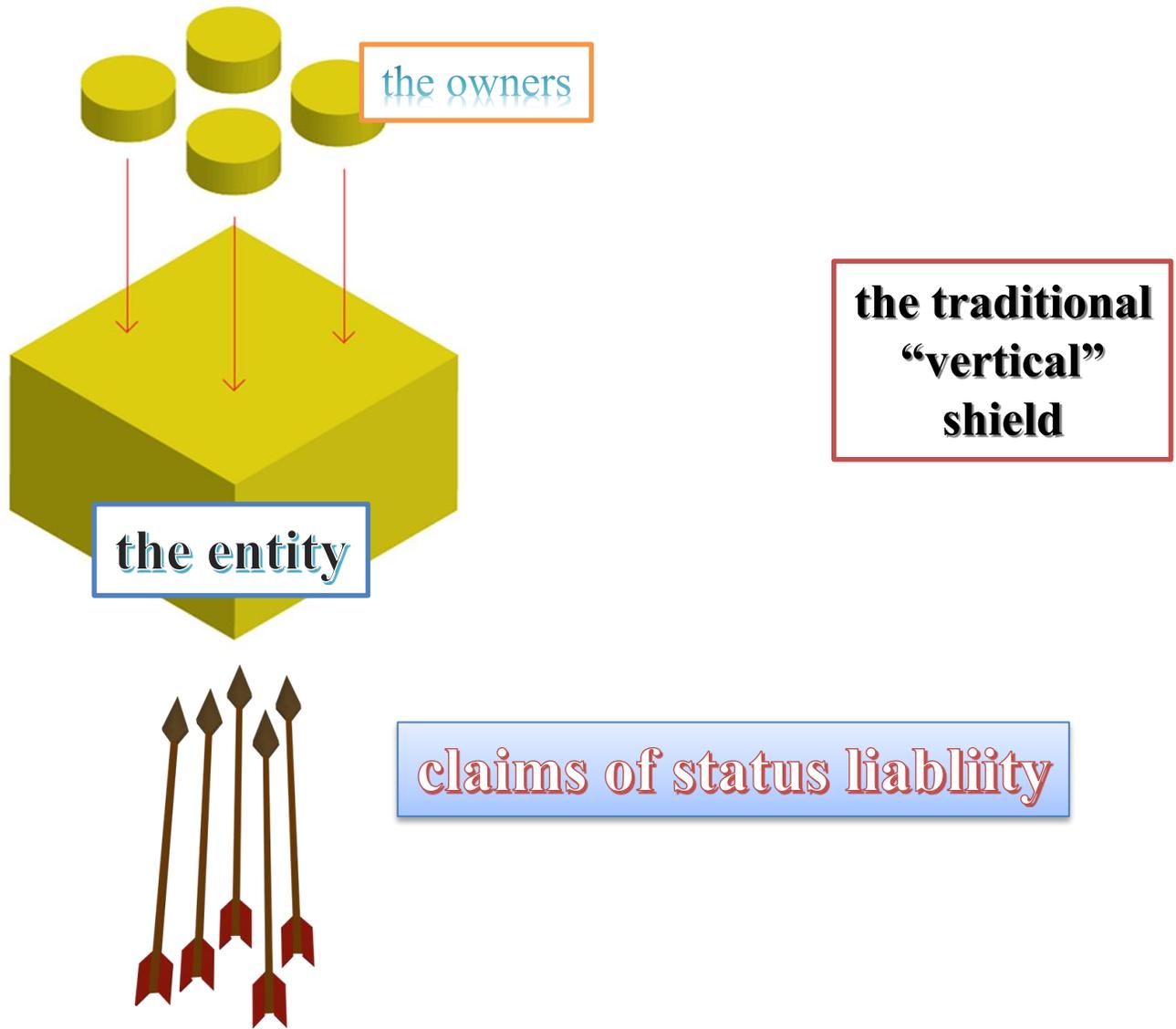
2 Approach of the January, 2016 Draft

- 3
- 4 1. As decided at the Drafting Committee’s November, 2015 meeting:
- 5 a. This draft confines protected series to limited liability companies.
- 6 b. This draft uses the “module” (or “plug in”) approach; that is, the act is intended
- 7 not to stand alone but rather to be plugged into the limited liability company
- 8 statute of an enacting state.
- 9 i. A module must presuppose and rely on a set of terms defined in some
- 10 limited liability company statute. The draft therefore relies on 12 terms
- 11 defined in the Uniform Limited Liability Company Act (2013). See
- 12 Section 102, cmt.
- 13 ii. However, as a drafting matter this act will be as easily adopted in a non-
- 14 ULLCA state as in an ULLCA state. A Legislative Note to Section 102
- 15 describes the very simple process by which an enacting state can assure
- 16 this act’s compatibility with the defined terms of the state’s limited
- 17 liability company statute.
- 18
- 19 2. This act needs a term to refer to the limited liability company statute into which this act
- 20 will plug in (as a module). As a temporary measure (pending guidance from the
- 21 Committee on Style) and for the sake of enactment “optics” in non-ULLCA states, this
- 22 draft refers to “[the limited liability company statute]” rather than “[the Uniform Limited
- 23 Liability Company Act (2013)]”.

24 Two Types of Liability Shields and How this Act Protects Against Abuses

25 The Traditional, “Vertical” Shield and the Novel “Horizontal” Shields

- 26
- 27
- 28
- 29 3. All modern business entities provide the traditional, “vertical” shield – protecting the
- 30 entity’s owners (and their respective assets) from automatic, vicarious liability for the
- 31 entity’s debts.
- 32



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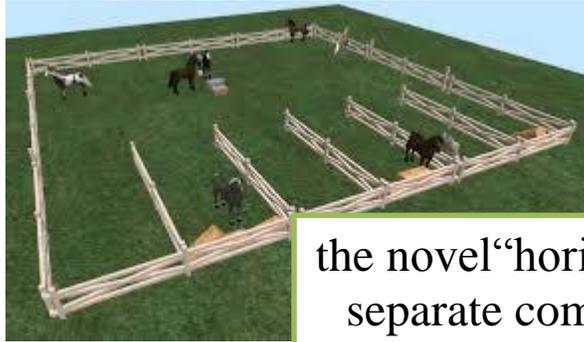
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- 
4. A “series” limited liability company provides novel, “horizontal” shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of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



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

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- 
5. If each protected series were an entirely separate limited liability company, the horizontal protection would exist as a matter of course. What makes the horizontal shield novel in a series limited liability company is that, as a matter of legal structure, a protected series is not entirely distinct from the company.

Protections Against Abuses of the Shields

The following materials (i) describe how this act approaches each type of shield so as to deter abuses; and (ii) compares this act’s approach to the approach of existing series laws.

6. Traditional (“vertical”) liability shield – protects an entity’s owners from being held vicariously liable for the entity’s debts – as applied to members associated with a protected series

*Under this act – The same principles of law and equity (e.g., piercing, affiliate liability) that apply to hold members of a traditional limited liability company vicariously liable for the company’s debts apply to hold members associated with a protected series vicariously liable for the protected series’ debts.*

*Other “series” statutes compared with this act – No current series statute addresses this issue. Only this act acknowledges the issue and expressly makes applicable the relevant principles of law and equity.*

7. “Horizontal” shields – asset protection among protected series, the series limited liability company, and vice versa. This “horizontal” asset protection is the crux of the protected series concept and raises two issues: (i) whether a public filing is necessary to create the horizontal shields; and (ii) what, if any, rules of law and equity apply to override the horizontal shields and hold one protected series liable for the debts of another protected series established by the same limited liability company.

1  
2 a. Public filing: Historically, it has been necessary for a business seeking a  
3 liability shield to make a public filing with a specified government office.

4 *Under this act – To establish a protected series (and thereby create the*  
5 *horizontal shields), the limited liability company must make a public*  
6 *filing, called a statement of designation. See Section 202(b).*

7 *Other “series” statutes compared with this act – Most series statutes*  
8 *permit a limited liability company to establish a protected series without a*  
9 *public filing, so long as the public filing establishing the company states*  
10 *that the company “may” have protected series. Therefore, the public*  
11 *record provides no information as to most of the thousands of currently*  
12 *existing protected series. (Illinois in the principal exception.)*

13  
14 b. Overriding the horizontal shields (affiliate liability):

15  
16 *Under this act – Under the broad category of “affiliate liability,” well-*  
17 *established principles of law and equity exist to hold one entity liable for*  
18 *the debts of another, even when the entities are not parent-subsiary.*  
19 *This act makes the same affiliate liability rules applicable among a series*  
20 *limited liability company and its protected series.*

21  
22 *Other “series” statutes compared with this act – No current series statute*  
23 *addresses this issue. Only this act acknowledges the issue and expressly*  
24 *makes applicable the relevant principles of law and equity.*

25  
26 *Example 1 – Frost Series Limited Liability Company (“Frost”) has*  
27 *established two protected series – Frost LLC Protected Series*  
28 *Steve (“Protected Series Steve”) and Frost LLC Protected Series*  
29 *Wendy (“Protected Series Wendy”). Applying affiliate liability*  
30 *doctrine, a court determines that Protected Series Steve is liable*  
31 *for the debts of Protected Series Wendy. All assets owned by*  
32 *Protected Series Steve are available to the creditors of Protected*  
33 *Series Wendy as well as to the creditors of Protected Series Steve.*

34  
35 c. Putting teeth into the recordkeeping requirement and the concept of association:  
36 Generally, in the absence of “affiliate liability,” assets owned by one entity are  
37 not subject to the enforcement of claims by creditors of any other entity.

38  
39 *Under this act – Even if a protected series is not liable for the debts of its*  
40 *series limited liability company or any other protected series of the*  
41 *company (i.e., no affiliate liability), an asset owned by the protected series*  
42 *is available for creditors of the company or another protected series of the*  
43 *company unless the protected series has complied with strict*  
44 *recordkeeping requirements and has thereby “associated” the asset with*  
45 *the protected series. See Sections 301 and 402.*

1  
2 *Example 2 – Frost Series Limited Liability Company (“Frost*  
3 *Series LLC”) has established two protected series – Frost LLC*  
4 *Protected Series Steve (“Protected Series Steve”) and Frost LLC*  
5 *Protected Series Wendy (“Protected Series Wendy”). Protected*  
6 *Series Steve owns Widget, but, due to deficiencies in*  
7 *recordkeeping, Widget is not associated with Protected Series*  
8 *Steve. The horizontal shields are effective – i.e., the facts do not*  
9 *support affiliate liability. However, because Widget is owned by*  
10 *but not associated with Protected Series Steve, Widget is available*  
11 *for the enforcement of claims by creditors not only of Protected*  
12 *Series Steve but also of claims of Protected Series Wendy and of*  
13 *Frost Series LLC.*

14  
15 *In chart form:*  
16

|  |
|--|
| <p><b>property owned by the series limited liability company or a protected series</b><br/><i>but not associated with the company or protected series (inadequate record keeping)</i></p> <p><b>Item by Item Protection Status: None</b></p> |
| <p><b>property owned by <i>and associated with</i> the series LLC</b><br/><i>(satisfactory record keeping)</i></p> <p><b>Item by Item Protection Status: Good</b><br/><b>(but irrelevant if affiliate liability established)</b></p>         |

17  
18 *Other “series” statutes compared with this act – No current series statute*  
19 *addresses this issue. Only this act protects against “shell game”*  
20 *manipulation by distinguishing property merely “owned” by a protected*  
21 *series or series limited liability company from property shown to be*  
22 *associated with its owner through stringent recordkeeping requirements.*  
23

- 24 8. Applying the Shield Abuse Protections to Foreign Series Limited Liability Companies  
25 and Foreign Protected Series – The protections in this act could be easily avoided if  
26 foreign limited liability companies and foreign protected series could operate within an  
27 enacting state but outside those protections. To avoid such an “end run,” Article 6  
28 applies three of the most important protections to foreign series limited liability  
29 companies and foreign protected series. See Sections 601(b) (in dealing with challenges  
30 to a shield, the “as if each were a separate LLC” rule applies as does the preservation of

principles of law and equity), 602 (failure to meet association requirements puts assets “up for grabs” item by item), and 604 (transparency requirements).

Revisions to Terminology

9. The “extrapolation” of LLC act and operating agreement provisions to each protected series, see Section 107, leads to parallelism in terminology, as shown in the following table.

| concept   | defined term pertaining to a series limited liability company                         | defined term pertaining to a protected series  |
|---|---|--|
| person with both governance and economic rights | member  | associated member<br>(member associated with a protected series)                         |
| governance rights                               | no defined term<br>(standard ULC approach)  | no defined term<br>(standard ULC approach)   |
| financial rights                                | transferable interest<br>(rights to distributions from the limited liability company) | series transferable interest<br>(rights to distributions from a protected series)        |
| owner solely of economic rights                 | transferee<br><i>of a transferable interest pertaining to the LLC</i>                 | series transferee<br><i>of a distributable interest pertaining to a protected series</i> |

As decided at the November, 2015 meeting, this draft eliminates “distributable interest” and “associated distributee,” substituting respectively “series transferable interest” and “series transferee.” The new terms may lead to two technical amendments to the Uniform Limited Liability Company Act (2013). See the second Legislative Note to Section 102.

From the Floor – A Very Supportive Comment

10. Below is the text of three comments handed up by a commissioner during the annual meeting last July. Unfortunately, the note is not signed, so I have not been able to thank the author. (However, given the placement of punctuation marks outside of “close quotation” marks [in my opinion, the better approach], I suspect the author may have spent some time in England or be somehow affiliated with a person educated in England.)

I include the comments because, in my opinion, they state enthusiastically, clearly and pointedly the rationales for continuing this project to completion.

1. Very much like “divisions”; in large corps divisions are subsidiaries/[“]affiliated groups”. The series is a more efficient way to form an affiliated group ... and, frankly, more transparent.

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2. If this encourages investment or economic development ((if entrepreneurs like it (correct or not))) we ought to like it.

3. At some point the question of “why series”, given their ubiquity, has the same practical effect as [“]why is there air.” Trying to make the rules fair is the goal. Right now, many of the questions answered by this act aren’t in other [acts] and will have to be litigated.

(bracketed material added; ellipsis and underlining in original)

1                   **SERIES OF UNINCORPORATED BUSINESS ENTITIES ACT**

2                                   **[ARTICLE] 1**

3   **GENERAL PROVISIONS**

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

6   **Comment**

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

11  
12                   **SECTION 102. DEFINITIONS.**

13                   (a) Except as otherwise provided in subsection (b), in this [act]:

14                                   (1) “Associated member” means a member that has become associated with a  
15 particular protected series under Section 302 and has not ceased to be associated.

16                                   (2) “Associated property” means property that is associated with a protected  
17 series or a series limited liability company under Section 301.

18                                   (3) “Foreign protected series” means a structure, arrangement, entity, or person  
19 other than an individual which has been established by a foreign limited liability company and  
20 under the law of the company’s jurisdiction of formation has powers comparable to a protected  
21 series established under this [act].

22                                   (4) “Foreign series limited liability company” means a foreign limited liability  
23 company that has at least one foreign protected series.

24                                   (5) “Person” means an individual, business corporation, nonprofit corporation,  
25 partnership, limited partnership, limited liability company, protected series, [general cooperative  
26 association,] limited cooperative association, unincorporated nonprofit association, statutory

1 trust, business trust, common-law business trust, estate, trust, association, joint venture, public  
2 corporation, government or governmental subdivision, agency, or instrumentality, or any other  
3 legal or commercial entity.

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

6 (7) “Publicly-filed records” means the record whose public filing by or with a  
7 government office is necessary to form a foreign limited liability company and any other records  
8 maintained in that office and pertaining to the company, including records pertaining to a foreign  
9 protected series of the company.

10 (8) “Series limited liability company”, except in the phrase “foreign series limited  
11 liability company”, means a limited liability company that has at least one protected series.

12 (9) “Series governor” means a person under whose authority the powers of a  
13 protected series of a series limited liability company are exercised and under whose direction the  
14 activities and affairs of the protected series are managed under [the limited liability company  
15 statute], this [act] and the operating agreement of the limited liability company that established  
16 the protected series. The term includes persons that collectively have the authority and provide  
17 the direction.

18 (10) “Series transferable interest” means the right, as initially owned by a person  
19 in the person’s capacity as the series limited liability company or a member of the company  
20 associated with a particular series to receive distributions from the protected series, whether or  
21 not the person remains a member or continues to own any part of the right. The term applies to  
22 any fraction of the interest, by whomever owned.

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

1 interest has been transferred, whether or not the transferor is the person that originally owned the  
2 series transferable interest. The term includes a person that owns a series transferable interest  
3 under Section 501(b).

4 (b) Except for the definitions in subsection (a)(3) and (4), whenever a term defined in  
5 subsection (a) is used in this [act] in reference to a foreign series limited liability company or  
6 foreign protected series, the term has the meaning provided in the statute under which the foreign  
7 company was formed or the foreign protected series established.

8 Notes and Query for the Drafting Committee  
9

10 “Foreign Protected Series” (3) – This definition has been revised as suggested by a  
11 reviewer of the feedback draft. Formerly, the definition was: ““Foreign protected series’  
12 means a structure, arrangement, entity, or person other than an individual which has been  
13 established by a foreign limited liability company and would be a protected series if  
14 established under this [act].” (The revision pertains to the second part of the definition.)  
15

16 “Person” (5) – At the suggestion of our Style Committee liaison, this draft reiterates the  
17 definition of “person” from the Uniform Limited Liability Company Act (2103), adding  
18 “protected series” rather than stating, as the previous draft did, that “person includes a  
19 protected series.”  
20

21 “Series governor” (9) – At its November, 2015 meeting, the Drafting Committee decided  
22 to substitute this term for “series manager,” on the theory that “manager” is already  
23 confusing enough in the context of standard LLCs.  
24

25 “Series transferable interest” (10) – Through what may have been an oversight, the  
26 Uniform Limited Liability Company Act (2013) leaves to a comment the statement that a  
27 transferable interest is the only interest that can be transferred without the consent of all  
28 the members. Should this article avoid the oversight, with a comment stating that no  
29 difference in meaning is intended and with a Legislative Note suggesting an appropriate  
30 amendment to the Uniform Limited Liability Company Act? *N.B.* If a state amends the  
31 Uniform Limited Liability Company Act, the state should check to determine whether a  
32 parallel amendment is necessary for its Uniform Limited Partnership Act and Uniform  
33 Partnership Act.  
34

35 Subsection (b) – This subsection addresses a problem that currently besets several  
36 business organization acts – namely, terms defined as applicable solely with regard to the  
37 domestic context but nonetheless used to refer to their respective foreign counterparts.  
38 The issue is more than technical; it has been dispositive in at least one case. See *Fannie*  
39 *Mae v. Heather Apartments Ltd. P'ship*, No. A13-0562, 2013 WL 6223564, at \*6 (Minn.

1 Ct. App. Dec. 2, 2013) (holding that the “exclusive remedy” language in the charging  
 2 order provision of the Minnesota LLC Act did not apply to a limited liability company  
 3 organized under the law of a foreign jurisdiction and noting that the LLC Act “defines a  
 4 ‘limited liability company’ as ‘a limited liability company, other than a foreign limited  
 5 liability company, organized or governed by this chapter’”) (citing Minn.Stat. § 322B.03,  
 6 subd. 28 (2012)).  
 7

8 **Comment**

9 **Subsection (a)** – Because this act is intended to be inserted into a state’s current limited  
 10 liability company act, this section does not define terms already defined in the Uniform Limited  
 11 Liability Company Act (2006) (Last Amended 2013). This act relies on the following definitions  
 12 from the Uniform Limited Liability Company Act (2013):  
 13

| defined term                      | Uniform Limited Liability Company Act (2013) Section |
|-----------------------------------|--|
| Foreign limited liability company | 102(5)   |
| Jurisdiction of formation         | 102(7)   |
| Limited liability company         | 102(8)   |
| Operating agreement               | 102(13)  |
| Manager                           | 102(9)   |
| Member                            | 102(11)  |
| Person                            | 102(15)  |
| Record                            | 102(18)  |
| Sign                              | 102(21)  |
| State                             | 102(22)  |
| Transferable interest             | 102(24)  |
| Transferee                        | 102(25)  |

14  
 15 For further information on this subject, see the first Legislative Note following the comments to  
 16 this section.  
 17

18 **“Associated member” [1]** – Under Section 302(a), a person – other than the series  
 19 limited liability company itself – must be a member of the company in order to be associated  
 20 with a protected series and thereby governance rights with regard the protected series. This  
 21 definition reflects that requirement.  
 22

23 **“Associated property” [2]** – This definition is key to establishing and delineating the  
 24 “internal shields” provided by Section 401(a). Even if a protected series is not liable for the  
 25 debts of its series limited liability company or any other protected series of the company (i.e., no  
 26 affiliate liability), an asset owned by a protected series is available for creditors of the company

1 or another protected series of the company unless the asset is the associated property of the  
2 protected series – i.e., the strict recordkeeping requirements stated in Section 301 have been  
3 complied with. See Section 402 (limiting item-by-item asset protection to associated property).  
4 The same rule applies to property owned by a series limited liability company.  
5

6 **“Foreign protected series” (3)** – This act characterizes a domestic protected series as a  
7 person. Section 103. However, it would be unwise to similarly characterize a foreign protected  
8 series, because most current statutes avoid the characterization issue.

9 This definition is derived from the Uniform Limited Liability Company Act (2013) §  
10 102(5), which defines “foreign limited liability company” as “an unincorporated entity formed  
11 under the law of a jurisdiction other than this state which would be a limited liability company if  
12 formed under the law of this state.”  
13

14 **“Person” [5]** – The definition of “person” in Uniform Limited Liability Company Act  
15 (2013) does not expressly include a protected series, although that definition’s catchall term –  
16 “other ... commercial entity” might apply. See Uniform Limited Liability Company Act §  
17 102(15).  
18

19 **“Publicly filed records” (7)** – This definition is used in Section 604(a), which imposes  
20 transparency requirements on foreign series LLCs and foreign protected series subject to the  
21 personal jurisdiction of the courts in an enacting state.  
22

23 **“Series limited liability company” [8]** – Under this definition, a limited liability  
24 company might go in and out of “series limited liability company” status (and back in again).  
25

26 **“Series governor” [9]** – This definition is derived from Uniform Limited Liability  
27 Company Act § 1001(15)(K) (the catch-all provision for the definition of “governor”). The other  
28 subparagraphs comprise a list of specific positions in specified entities, and the list helps explain  
29 the meaning of the general language in Paragraph (15). *Ejusdem generis*. See EJUSDEM  
30 GENERIS, Black's Law Dictionary (10th ed. 2014) (“[a] canon of construction holding that  
31 when a general word or phrase follows a list of specifics, the general word or phrase will be  
32 interpreted to include only items of the same class as those listed”). Given this act’s  
33 “extrapolation” approach, see Section 107, the list is equally useful here.  
34

35 **“Series transferable interest” [10]** – This definition is derived from Uniform Limited  
36 Liability Company Act (2013) § 102(24), which defines “transferable interest” with many  
37 additional words. No difference in meaning is intended other than the source of the distributions.

38 Under Section 107 (the extrapolation provision), unless the operating agreement provides  
39 otherwise, the restrictions that apply to the transfer of a transferable interest will apply by  
40 analogy to the transfer of a series transferable interest.  
41

42 **“Series transferee” (11)(B)** – This term applies only to what might be termed “naked  
43 transferees,” i.e. an owner of solely financial rights. See Uniform Limited Liability Company  
44 Act (2013) § 106(b), cmt. Neither this definition nor Section 302(a) (limiting “associated status”  
45 to members and the series LLC) determines the effect when an associated member purports to  
46 transfer its governance interest in a protected series to another associated member of the series

1 limited liability company or *vice versa*. For a discussion of the analogous issue in a standard  
2 limited liability company, see Uniform Limited Liability Company Act (2013) §§ 501, cmt., 502,  
3 cmt.

4  
5 **Legislative Note:** *Each enacting state should determine whether its limited liability company act*  
6 *defines the terms defined in this section. If a state’s LLC act lacks a particular term entirely, the*  
7 *state should adopt the term as defined in the Uniform Limited Liability Company Act (2013). If a*  
8 *state act defines a particular concept but uses a different label – e.g., limited liability company*  
9 *interest instead of transferable interest – the state should modify this act accordingly.*

10  
11 **Legislative Note:** *An enacting state should consider amending Uniform Limited Liability*  
12 *Company Act 102(24) and (25) (or their respective equivalents) to include the following*  
13 *exceptions:*

14  
15 *“Transferable interest”, except in the phrase “series transferable interest”, means the*  
16 *right, as initially owned by a person in the person’s capacity as a member, to receive*  
17 *distributions from a limited liability company, whether or not the person remains a*  
18 *member or continues to own any part of the right. The term applies to any fraction of the*  
19 *interest, by whomever owned.*

20  
21 *“Transferee”, except in the phrase “series transferee”, means a person to which all or*  
22 *part of a transferable interest has been transferred, whether or not the transferor is a*  
23 *member. The term includes a person that owns a transferable interest under Section*  
24 *603(a)(3).*

25  
26 **SECTION 103. NATURE OF PROTECTED SERIES.** A protected series is a person.

27 Except as otherwise provided in Section 104(c)(3), a protected series is distinct from:

28 (1) the series limited liability company that established the protected series;

29 (2) another protected series of the company;

30 (3) another member of the company, regardless of whether the member is associated with  
31 the protected series;

32 (4) a series transferee, regardless of whether associated with the protected series; and

33 (5) a transferee of a transferable interest pertaining to the company.

34 **Comment**

35  
36 Section 104(c)(3) provides that a protected series cannot exist on its own; therefore, a protected  
37 series is not entirely distinct from the limited liability company whose existence is necessary to  
38 the existence of the protected series.

1           **SECTION 104. POWERS, PURPOSE, AND DURATION OF PROTECTED**  
2 **SERIES.**

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

4           (b) Except as otherwise provided in subsections (c) and (d), a protected series has the  
5 same powers and purpose as the series limited liability company that established the protected  
6 series.

7           (c) A protected series may not:

8                   (1) establish a protected series or be associated with a protected series of its series  
9 limited liability company;

10                   (2) be a party to a merger, interest exchange, conversion, domestication, or  
11 comparable transaction, except as provided under subsection (d);

12                   (3) continue after its series limited liability company has dissolved and completed  
13 winding up, unless:

14                           (A) the protected series has been a party to a merger in accordance with  
15 subsection (d); and

16                           (B) the merger becomes effective before the series limited liability  
17 company has completed winding up[.] [; or]

18                           [(4) ....]

19           (d) A protected series may be party to a merger only if:

20                   (1) the law governing the other parties to the merger authorizes the merger;

21                   (2) TBD approve(s) the plan of merger; and

22                   (3) when the merger becomes effective:

23                           (A) the protected series is not the surviving party; or

1 (B) the protected series continues as:

2 (I) a protected series of another series limited liability company or  
3 the series limited liability company that established the protected series; or

4 (II) a foreign protected series whose establishment is reflected in  
5 the publicly-filed records of its foreign series limited liability company.

6 (e) A protected series may not do anything that the law of this state prohibits a limited  
7 liability company or subsidiary of a limited liability company from doing.

8 Queries for the Drafting Committee  
9

10 Subsection (b) – Should the act include bracketed language or a Legislative Note  
11 suggesting that an enacting state might want to limit protected series to particular regulated  
12 industries? If so, does it inevitably follow that an enacting state will disregard the internal  
13 shields of a foreign protected series doing business in the state in any industry not permitted to  
14 domestic protected series? (In the Reporter’s view, the answer to the second question is  
15 indubitably “yes.”)  
16

17 Subsection (d)(2) – In the default mode, who should have the right to approve the merger:  
18 the series governor, the members associated with the protected series, the members generally?  
19 Whichever is chosen, in the default mode, should unanimous consent be required? If left to  
20 extrapolation (Section 107), the answer would be “all associated persons” (i.e., any associated  
21 member and the series limited liability company if associated with the protected series).  
22

23 Subsection (e) – The “feedback” version had different language to the same effect: “If the  
24 law of this state prohibits a limited liability company or a subsidiary of a company from  
25 engaging in an activity or affair, conducting a business, entering into a transaction, or  
26 functioning or operating in any other way, the prohibition applies to each protected series of the  
27 company.” Upon reflection, the Reporter considers the new language more felicitous, assuming  
28 the Drafting Committee determines that the new language makes the point adequately.  
29

30 **Comment**  
31

32 **Subsection (a)** – Derived from Uniform Limited Liability Company Act (2013) 109(a),  
33 this provision is stated separately to enable this article to render this provision non-waivable.  
34

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

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

9  
10 **Subsection (d)(3)(A) and (B)** – A protected series may merge into the series limited  
11 liability company but not *vice versa*.

12  
13 **Legislative Note:** *Section 105(c)(4) is provided in case an enacting state decides that a power, a*  
14 *purpose, or conduct acceptable for a limited liability company is not acceptable for a protected*  
15 *series.*

16  
17 **SECTION 105. GOVERNING LAW.** The law of this state governs:

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

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

20 (A) the series limited liability company;

21 (B) another protected series of the company;

22 (C) a member not associated with the protected series; and

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

24 (3) the liability of a person for a debt, obligation, or other liability of a protected series, if  
25 the debt, obligation, or other liability is asserted solely by reason of the person having liability in

26 any of the following capacities:

27 (A) an associated member, series transferee, or series governor of the protected  
28 series;

29 (B) a member, whether or not associated with the protected series; or

30 (C) a transferee;

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

1 liability of a protected series of the company when the debt, obligation, or other liability is  
2 asserted solely by reason of the series limited liability company:  
3 (A) having established the protected series;  
4 (B) being or acting as a series governor of the protected series: or  
5 (C) having the protected series be or act as a manager of the company; and  
6 (5) the liability of a protected series of a series limited liability company for a debt,  
7 obligation, or other liability of the company or another protected series of the company when the  
8 debt, obligation, or other liability is asserted solely by reason of the protected series:  
9 (A) being a protected series of the company or having as a series governor the  
10 company or another protected series of the company; or  
11 (B) being or acting as a manager of the company or a series governor of another  
12 protected series of the company.

13 Query for the Drafting Committee

14  
15 Section Generally Under-Inclusive? – Arguably at least, this section is woefully under-inclusive.  
16 An enacting state will want every provision of this [act] to apply not only in the state’s court but  
17 also in the courts of foreign jurisdictions. However, the formulation here is standard for ULC  
18 business entity acts. *See, e.g.*, Uniform Limited Liability Company Act (2013) § 104 (stating  
19 that “[t]he law of this state governs: (1) the internal affairs of a limited liability company; and (2)  
20 the liability of a member as member and a manager as manager for a debt, obligation, or other  
21 liability of a limited liability company”).  
22

23 Paragraph (3)(A) Under-Inclusive? – Should this provision (and parallel provisions elsewhere)  
24 include series transferees and series governors of other protected series?  
25

26 **Comment**

This section parallels Section 501, which provides choice of law rules pertaining to foreign series  
limited liability companies and foreign protected series

27  
28 **Paragraph 1** – The reference to internal affairs both reflects and buttresses Section 103.  
29 (stating that “[a] protected series is a person”).  
30

31 **Paragraph 2** – The listed relationships are not within the internal affairs of any protected

1 series. Arguably, the listed relationships comprise “internal affairs” of the series limited liability  
2 company, *see* Uniform Limited Liability Company Act (2013) § 104(a) (stating that “[t]he law of  
3 this state governs ... the internal affairs of a limited liability company”). This provision is  
4 included for the avoidance of doubt.

5  
6 **SECTION 106. GENERAL RELATION OF OPERATING AGREEMENT TO**

7 **PROTECTED SERIES.**

8 (a) Except as otherwise provided in subsections (b) and (c) and subject to Section 107,  
9 the operating agreement of a series limited liability company governs:

10 (1) the activities and affairs of a protected series of the company and the conduct  
11 of those activities and affairs;

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

14 (3) relations among the associated members of the protected series;

15 (4) relations between the associated members of the protected series and:

16 (A) the protected series;

17 (B) the company;

18 (C) another protected series of the company;

19 (D) a member whether or not associated with the protected series;

20 (E) the owner of a transferable interest pertaining to the company; and

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

22 (5) the rights and duties under this [act] of a person in the capacity of series  
23 governor.

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

26 (c) The operating agreement of a series limited liability company may not:

1 (1) vary Section 103, 105, 107(b), 301, 302, 401, 402, 501(a), 502, or 503(b) or  
2 (d);

3 (2) vary Section 104, except to:

4 (A) vary the rule stated in subsection (b) concerning the powers and  
5 purpose of a protected series, but not to provide for any power or purpose that a limited liability  
6 company may not have; or

7 (B) impose additional conditions or requirements on a merger permitted  
8 by Section 104(d); or

9 (3) vary Section 201, except to change the approval requirement stated in Section  
10 201(a).

11 (d) Establishing a protected series does not affect a vote, consent, or other requirement  
12 for amending the operating agreement of the limited liability company that established the  
13 protected series.

#### 14 **Comment**

15  
16 This section is derived from Uniform Limited Liability Company Act (2013) § 105. A  
17 protected series: (i) has no operating agreement of its own; (ii) is governed by the operating  
18 agreement of the series limited liability company; and (iii) will have whatever amount of “self-  
19 governance” that agreement provides. An operating agreement can provide for a protected series  
20 in a variety of ways, including appendices, exhibits, etc.

21  
22 Section 107 states an additional, very important role for the operating agreement of a series  
23 limited liability company – the so-called “extrapolation” approach.

24  
25 **Subsection (c)** – Analogously to Uniform Limited Liability Company Act (2013) §  
26 105(c), this subsection lists provisions that are either not variable at all or variable only within  
27 specified limits. In addition, Section 107 will extrapolate Uniform Limited Liability Company  
28 Act Section 105(c) itself to matters under this act.

29  
30 For example, Uniform Limited Liability Company Act (2013) § 105(c)(3):

- 31  
32 • prohibits the operating agreement from varying “any requirement, procedure, or other  
33 provision of [Uniform Limited Liability Company Act (2013)] pertaining to: (A)

1 registered agents; or (B) the [Secretary of State], including provisions pertaining to  
2 records authorized or required to be delivered to the [Secretary of State] for filing under  
3 [Uniform Limited Liability Company Act (2013);” and

- 4 • thereby prohibits the operating agreement from varying this act’s Section 203 (agent for  
5 service of process).

6  
7 Sometimes—but not always—the Comments to this act refer to a variable provision as a “default  
8 rule” and a non-waivable provision as “mandatory.” These references are merely to draw  
9 attention to the default/mandatory distinction in particular contexts and have neither the intent  
10 nor the power to affect the default/mandatory status of provisions of this act whose comments  
11 lack a comparable reference.

12  
13  
14 **Subsection (c)(1)** – The cited sections refer respectively to the following topics:  
15  
16

|                |  |
|----------------|--|
| Section 103    | nature of protected series   |
| Section 105    | governing law  |
| Section 107(b) | limits on extrapolation  |
| Section 202    | name   |
| Section 301    | associating property   |
| Section 302    | associating members,<br>series transferable interest   |
| Section 401    | limited liability<br>(both vertical and horizontal shields)  |
| Section 402    | limiting claims against associated property  |
| Section 501(a) | dissociation from a series limited liability<br>company ends association with<br>protected series          |
| Section 502    | events of dissolution of a protected series  |
| Section 503(b) | judicial supervision of winding up   |
| Section 503(d) | series limited liability company has not<br>finished winding up until all protected series<br>are wound up |

17  
18 **Subsection (c)(2)** – Section 104 concerns the powers, purpose, and duration of a  
19 protected series, and includes important restrictions.  
20

21 **Subsection (c)(2)** – Section 201 pertains to establishing a protected series. This  
22 paragraph is included for avoidance of doubt. Uniform Limited Liability Company Act (2013) §  
23 105(c)(3) as extrapolated also prohibits an operating agreement from varying the other  
24 subsections of Section 201.  
25

1           **SECTION 107. APPLICATION OF [LIMITED LIABILITY COMPANY**  
2 **STATUTE] AND OPERATING AGREEMENT OF LIMITED LIABILITY COMPANY**  
3 **TO PROTECTED SERIES.**

4           (a) Subject to subsection (b) and except as otherwise provided in the operating agreement  
5 of a series limited liability company, [the limited liability company statute] and the company's  
6 operating agreement apply to matters subject to this [act] according to the following rules:

7           (1) A protected series is deemed to be a limited liability company that is distinct  
8 from the series limited liability company and any other protected series of the actual company.

9           (2) With regard to the company deemed to exist under paragraph (1):

10           (A) an associated member of the protected series is deemed to be a  
11 member of that company;

12           (B) a series transferee with regard to the protected series is deemed to be a  
13 transferee with regard to that company;

14           (C) any series transferable interest pertaining to the protected series is  
15 deemed to be a transferable interest pertaining to that company;

16           (D) a judgment creditor of an associated member of the protected series is  
17 deemed to be a judgment creditor of a member of that company;

18           (E) a judgment creditor of a series transferee with regard to the protected  
19 series is deemed to be a judgment creditor of a transferee with regard to that company;

20           (F) a series governor is deemed to be a manager of that company; and

21           (G) property owned by the protected series, whether or not associated, is  
22 deemed to be owned by that company.

23           (b) Subsection (a) does not apply to the extent applying subsection (a) would:

1 (1) irreconcilably conflict with this [act]; or

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

3 (A) accept for filing a type of record that neither this [act] nor [the limited  
4 liability company statute] expressly authorizes or requires to be delivered to the [Secretary of  
5 State] for filing; or

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

### 9 Queries for the Drafting Committee

10  
11 Suggestions for Examples Solicited – Eventually this comment will include several examples.  
12 The Reporter solicits suggestions for topics/situations to be described in an example.

13  
14 Should “As If” Replace “Deemed”? – Two reviewers expressed concerns over the “deemed”  
15 approach and suggested using “as if” instead. Using “as if” entails some drafting difficulties, so  
16 this draft continues the “deemed” approach pending a decision by the Drafting Committee.

17  
18 Does a Comment Suffice to Indicate That, To The Extent a Provision of This Act Is Variable, An  
19 Irreconcilable Conflict Is Impossible? – See the proposed comment to Subsection (b)(1).

20  
21 Is ‘Extrapolation’ a Useful Word for the Comments or Should “Application” Be Substituted? –  
22 The Reporter thinks the answers should be yes and then no but acknowledges his bias as the  
23 person who started using “extrapolation.”

24  
25 Should Uniform Limited Liability Company Act (2013) § 304(b) Apply to the Horizontal  
26 Shields? – Uniform Limited Liability Company Act (2013) § 304(b) provides that disregard of  
27 governance formalities is not a ground for piercing the traditional vertical shield. If that  
28 provision is to apply to the horizontal shields of a series limited liability company, the Reporter  
29 recommends that this act so state but make an exception for failure follow the recordkeeping  
30 requirements of Section 301. That is, general disregard of those requirements would be a ground  
31 for piercing. In any event, Section 304(b) is irrelevant to Section 401.

32  
33 If Section 304(b) will not be extrapolated, will a comment suffice to explain why Section 107  
34 extrapolates Uniform Limited Liability Company Act (2013) § 304(b) to a vertical shield  
35 pertaining to a protected series but not to any horizontal shields?

36  
37 Extrapolation of the Charging Order Remedy – Subsection (a)(2)(D) and (E) extrapolate the  
38 charging order provision but does not currently address how a judgment creditor of a series

1 limited liability company reaches a series transferable interest that the company owns in a  
2 protected series established by the company. Depending on the circumstances, making a  
3 charging order the judgment creditor’s exclusive remedy would be appropriate.  
4

5 EXAMPLE: Bucket LLC is a series limited liability company with 20 members, four of  
6 whom are associated with Protected Series A of Bucket LLC (“PSA”). Each of the  
7 associated members has a 20% series transferable interest in PSA, and Bucket LLC has  
8 the remaining 20% series transferable interest. PSA is managed by its four associated  
9 members; the series LLC has consent rights only as to extraordinary matters. It would  
10 not be abusive to restrict a judgment creditor of the LLC to a charging order against the  
11 LLC’s series transferable interest in PSA. (This restriction would not affect the judgment  
12 creditor’s access to any other assets of the LLC.)  
13

14 Consider, however, different circumstances:  
15

16 EXAMPLE: Salem LLC is a series limited liability company that has divided its  
17 activities and assets into four protected series. None of the protected series has an  
18 associated member. The series limited liability company is the series governor of each  
19 protected series and thus controls when (if ever) each protected series will make a  
20 distribution. If judgment creditors of the LLC are limited to a charging order on the  
21 LLC’s four (separate) series transferable interests, the result makes Mr. Olmstead seem a  
22 piker. *Olmstead v. F.T.C.*, 44 So. 3d 76, 83 (Fla. 2010). See Uniform Limited Liability  
23 Company Act (2013) § 503(f), cmt (explaining why the charging order remedy should not  
24 be exclusive when the judgement debtor is the only member of an LLC).  
25

26 Should this act adopt an analogy to the “Olmstead” fix in Uniform Limited Liability Company  
27 Act (2013) § 503(f)?  
28

### 29 **Comment**

30  
31 This section states the act’s extrapolation approach.  
32

33 EXAMPLE: The operating agreement of a manager-managed series LLC requires the  
34 manager’s consent to any transfer of a transferable interest but is silent as to transfers of  
35 series transferable interest.  
36

37 EXAMPLE: TBA  
38

39 EXAMPLE: TBA  
40

41 EXAMPLE: TBA  
42

43 This section pertains only to domestic series limited liability companies and protected series.  
44 Section 603(a) applies to foreign series limited liability companies and foreign protected series  
45 ULLCA (2013)’s provisions pertaining to registration to do business in the state .  
46



1 name of the company, the name of the protected series to which the designation applies, or both.  
2 The change takes effect when the statement of designation becomes effective.

3 **Comment**  
4

5 The operating agreement of a series limited liability company cannot vary this section,  
6 except to change the quantum of vote or consent stated in subsection (a).  
7

8 **Subsection (b)** – For who has the authority to sign the statement on behalf of a limited  
9 liability company, see Uniform Limited Liability Company Act (2013) § 203(a)(1) (stating that  
10 in general “a record signed by a limited liability company must be signed by a person authorized  
11 by the company”). For the possibility and effect of a delayed effective date, see Uniform Limited  
12 Liability Company Act (2013) § 207.  
13

14 **Subsection (c)** – A protected series can be established without any associated members,  
15 associated property, or series transferees. In that circumstance, the series limited liability  
16 company will own the series transferable interest. See Section 302(c). *Contrast* Uniform  
17 Limited Liability Company Act (2013) § 201(d) (“A limited liability company is formed when  
18 the certificate of organization becomes effective and at least one person has become a member.”)  
19

20 **Subsection (d)** – This provision uses “statement of designation change” to avoid  
21 confusion with statutes that use “statement of change” for a different purpose. *See* Uniform  
22 Limited Liability Company Act (2013), § 116 (Change of Registered Agent or Address for  
23 Registered Agent by Limited Liability Company).  
24

25 **Legislative Note:** *If the limited liability company statute of the enacting state requires the*  
26 *certificate of formation (however denominated) to identify a person with governance authority,*  
27 *the same requirement should appear in subsection (b).*  
28

29 **SECTION 202. NAME.**

30 (a) Except as otherwise provided in subsection (b), the name of a protected series must  
31 comply with [the provision of the limited liability company statute or other statute imposing  
32 name requirements]; and

33 (b) The name of a protected series must begin or end with the name of the series limited  
34 liability company that is establishing the protected series, including any word or abbreviation  
35 required by [the limited liability company statute or other statute imposing name requirements]  
36 to designate that the company is a limited liability company.

1 Queries to the Drafting Committee

2  
3 Should paragraph (2)(A) apply if: (1) a series limited liability company merges into  
4 another limited liability company and the protected series of the former become protected series  
5 of the latter; and (2) a protected series is itself party to a merger and survives as a protected  
6 series of a different series limited liability company or as a foreign protected series? See also the  
7 Queries to Section 503, which pose related questions.

8  
9 **Comments**

10  
11 **Subsection (b)** – Due to this subsection, a series limited liability company that changes  
12 its name must change accordingly the name of each of the company’s protected series.

13  
14 **SECTION 203. REGISTERED AGENT; SERVICE OF PROCESS, NOTICE, OR**  
15 **DEMAND.**

16 (a) The registered agent within this state of a series limited liability company is the  
17 registered agent within this state for each protected series of the company.

18 (b) Before delivering a protected series designation to the [Secretary of State] for filing, a  
19 limited liability company shall arrange with its registered agent that the registered agent shall  
20 serve as the registered agent within this state for the protected series to be established when the  
21 certificate becomes effective.

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

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

29 (e) Service of a process, notice, demand, or other record on a series limited liability  
30 company constitutes service on each protected series of the company.

1 (f) If a process, notice, demand, or other record is by its terms limited to one or more  
2 protected series of a series limited liability company, service on one or more of those protected  
3 series is not service on the company or any other protected series of the company.

4 (g) If a person ceases to be the registered agent for a series limited liability company, the  
5 person thereby ceases to be the registered agent for each protected series of the company. A  
6 person that ceases to be the registered agent of a protected series thereby ceases to be the registered  
7 agent of the series limited liability company that established the protected series and any other  
8 protected series of the company.

9 Query to the Drafting Committee

10 Should subsection (g) be relegated to a comment?  
11  
12

13 **Comment**

14  
15 **Subsection (a)** – The rule is different for foreign protected series registered to do  
16 business in this state. See Section 604(a), cmt.  
17

18 **Subsection (b)** – This provision refers to a limited liability company rather than a series  
19 limited liability company so as to encompass a limited liability company that is preparing to  
20 establish its first protected series.  
21

22 **Subsection (c)** – This provision is derived from the Uniform Business Organizations  
23 Code (“UBOC”) § 1-209(c): “A person that signs a record as an agent or legal representative  
24 affirms as a fact that the person is authorized to sign the record.”  
25

26 **Subsection (d)** – Due to this provision, a registered agent is not required to perform a  
27 sorting function unless so provided in an agreement with the series LLC. This draft adds “or  
28 other record” to the standard formulation because that latter formulation authorizes, while this  
29 provision protects. The addition has the salutary side effect of clarifying that a “process, notice,  
30 demand” must be in record form.  
31

32 **Subsection (e)** – Since service on a series limited liability company is service on each of  
33 the company’s protected series, it is unnecessary to provide a method of substitute service for  
34 serving a protected series. Uniform Limited Liability Company Act (2013) § 119(b) provides for  
35 substitute service on a limited liability company.  
36

37 A major purpose of this provision is to facilitate service of a charging order, which, for example,  
38 might be directed to “Series LLC Alpha and any protected series of Series LLC Alpha.” The

1 provision will also facilitate documents requests in discovery. Service of a record on a protected  
2 series does not affect the protected series if the record is inapposite. For example, serving a  
3 summons on a series limited liability company has no effect on a protected series unless the  
4 summons names the protected series as a defendant. Likewise, serving a protected series with a  
5 charging order pertaining to a judgment debtor has no effect if the debtor is neither an associated  
6 member of the protected series nor a series transferee.

7  
8 **Subsection (g)** – These rules are perhaps implicit in subsection (a) but, for the moment at  
9 least, are stated here explicitly for the avoidance of doubt. (See Queries preceding these  
10 comments.)

11  
12 **SECTION 204. INFORMATION REQUIRED IN [ANNUAL] [BIENNIAL]**

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

16 Query to the Drafting Committee

17  
18 The Committee has not yet decided whether to provide for certificates of good standing  
19 for a protected series. Uniform Limited Liability Company Act § 112 provides for such certificates  
20 for limited liability companies, but that section is not extrapolated. See Section 107(b)(2).

21  
22 **Comment**

23  
24 Under Section 107 (extrapolation), an enacting state’s limited liability company statute  
25 determines how up-to-date the information required by this section must be.

26  
27 *Legislative Note: If the law of an enacting state does not require an annual or biennial report,*  
28 *this section should be omitted.*

29  
30 **[ARTICLE] 3**

31 **ASSOCIATED PROPERTY, MEMBERS, AND SERIES TRANSFERABLE INTERESTS;**

32 **GOVERNANCE**

33 **SECTION 301. ASSOCIATING PROPERTY WITH PROTECTED SERIES OR**  
34 **SERIES LIMITED LIABILITY COMPANY.**

35 (a) Only property owned by a protected series may be associated with the protected  
36 series. Only property owned by a series limited liability company may be associated with the

1 company.

2 (b) Property owned by a protected series is associated with the series only if there is  
3 created and maintained a record, readily accessible to the series limited liability company, that  
4 identifies the protected series and contains:

5 (1) a description of the property which is sufficiently specific to permit a  
6 reasonable person with no connection to the company or any protected series of the company to  
7 identify the item of property and distinguish it from:

8 (A) property owned by the company, whether or not associated with the  
9 company; and

10 (B) property owned by any other protected series of the company, whether or  
11 not associated with the other protected series; and

12 (2) a record stating when and from which person the protected series acquired the  
13 property.

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

17 (d) The record of property associated with a protected series required by subsection (b)  
18 must be maintained until the earlier of:

19 (1) [six] years after the date on which the protected series ceases to have any  
20 interest in the property; or

21 (2) the date on which the series limited liability company completes winding up  
22 its activities and affairs.

23 (e) A series limited liability company may associate property with itself in accordance

1 with subsections (a) through (d).

2 Note and Query to Drafting Committee  
3

4 This section formerly included a rule on the burden of proving association. At its  
5 November, 2015 meeting, the Drafting Committee decided to eliminate that rule as (i) either  
6 overly complicated or under-inclusive; and (ii) properly the domain of other law. At that  
7 meeting, the Committee also decided to delete a provision pertaining to titled property, on the  
8 grounds that the provision would interfere with numerous legitimate uses of protected series.  
9

10 This section also formerly included a subsection (f): “A person’s failure to comply with  
11 this section does not revive a claim that has been barred by a statute of limitation or statute of  
12 repose.” One reviewer of the feedback draft called the language cryptic. The Reporter has a  
13 query pending to the person who first requested the language.  
14

15 **Comments**  
16

17 This section states the mechanics required to associate property. Section 402 states the  
18 consequence of compliance *vel non*.  
19

20 **Subsection (a)** – Only property “owned” by a protected series may be associated with the  
21 series. The same rule applies to the series limited liability company itself. Thus, associated  
22 property is a subset of owned property (although, if the recordkeeping is proper the subset will  
23 be co-extensive with the set).  
24

25 For the meaning of “owns,” see *Ownership*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“The  
26 bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it  
27 to others.”) ; Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979) (characterizing “the right  
28 to exclude others” as “one of the most essential sticks in the bundle of rights that are commonly  
29 characterized as property”). A protected series may own one or all of the “bundle of sticks”  
30 pertaining to a particular item of property. See Mitchell Aero, Inc. v. City of Milwaukee, 42  
31 Wis. 2d 656, 662, 168 N.W.2d 183, 185 (1969) (“Ownership is often referred to in legal  
32 philosophy as a bundle of sticks or rights and one or more of the sticks may be separated from  
33 the bundle and the bundle will still be considered ownership.”)  
34

35 **Subsection (b)** – At its November, 2015 meeting, the Drafting Committee decided to  
36 remove a provision that imposed on the series limited liability company the duty of creating and  
37 maintaining the records. Hence, the passive voice is used here purposely. The “readily  
38 accessible to the series limited liability company” implements the Committee’s decision to  
39 require the company to be the “point person” for access to the records. Who has a right of access  
40 is a question for law other than this act, and the question will be different depending on who is  
41 seeking access and what information is sought. For example, compare:  
42

- 43 • a request by an associated member of Frost LLC – Protected Series 1 to examine the  
44 records pertaining to the associated property of Protected Series 1;
- 45 • a request by the same member to examine records of property associated with another

1 protected series with which the member is not associated, with the member seeking to  
2 determine whether the records pertaining to that property might undermine the clarity of  
3 the records maintained pertaining to the associated property of Protected Series 1; and

- 4 • a third party creditor, searching for a hole in the internal shields.

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

7  
8 **SECTION 302. ASSOCIATED MEMBERS; INITIAL OWNERSHIP OF SERIES**  
9 **TRANSFERABLE INTERESTS.**

10 (a) Only the series limited liability company or a member of the company may become  
11 associated with a protected series of the company.

12 (b) Subject to subsection (c), a series limited liability company or a member of the  
13 company becomes associated with a protected series when the company’s operating agreement  
14 or a procedure established under the agreement identifies:

15 (1) the company or member as associated with the protected series; and

16 (2) any series transferable interest owned by the company or member in  
17 connection with becoming or being associated with the protected series.

18 (c) If a protected series has no associated members when established, the series limited  
19 liability company is associated with the protected series and owns all the series transferable  
20 interests.

21 **Comment**

22  
23 **Subsection (a)** – By definition, a member cannot become associated with the series  
24 limited liability company itself, because governance and economic rights belong to the member  
25 *qua* member. Put another way: in effect, though not formally, each member of a series limited  
26 liability company is associated with the company.

27  
28 **Subsection (b)** – The reference to “a procedure established under the [operating]  
29 agreement” encompasses, for example, providing that a member is associated with a protected  
30 series when the required information is stated in the “books and records” of the series limited  
31 liability company.  
32

1           **Subsection (b)(2)** – The reference to “any series transferable interest” means that a  
2 member may be associated with a protected series without owning a series transferable interest.  
3

4           **Subsection (c)** – In the situation addressed by this provision, the series limited liability  
5 company becomes associated by operation of law – i.e., automatically. However, best practices  
6 would be to document the association in the operating agreement or an appropriate exhibit,  
7 appendix, or other record.  
8

9 If subsequently one or more members become associated with the protected series, “the ...  
10 operating agreement or a procedure established under the agreement” identifying “any series  
11 transferable interest owned by the ... member in connection with becoming or being associated  
12 with the protected series” should take into account what is to happen to the series transferable  
13 interest owned by the series limited liability company.  
14

15 *Legislative Note: If an enacting state’s limited liability company statute does not permit non-*  
16 *economic members, the state should revise Subsection (b)(2) as follows: “~~any~~ the series*  
17 *transferable interest owned by the company or member in connection with becoming or being*  
18 *associated with the protected series”.*  
19

### 20           **SECTION 303. GOVERNANCE OF PROTECTED SERIES.**

21           (a) A series limited liability company is the series governor of each of the company’s  
22 protected series and has the right and duty to make all decisions concerning each protected series  
23 regardless of whether the decision concerns a matter in or outside the ordinary course of the  
24 activities and affairs of the series.

25           (b) A series governor of a protected series does not in that capacity owe any duties to:

26                   (1) the series limited liability company or the members of the company in their  
27 capacity as members; or

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

#### 30                                   Note to the Drafting Committee

31           At its November, 2015 meeting the Drafting Committee:

- 32           • considered and rejected an alternative rule – management by associated members, if any;
- 33           • decided to delete a provision that empowered a series limited liability company to
- 34           resolve management deadlock in any of the company’s protected series; and
- 35           • decided to delete a provision addressing the “*Sinven/Nemec* problem.”
- 36

1 **Comment**

2 **Subsection (b)** – What duties a series governor owes to associated members depends on  
3 Section 107 (extrapolation) and the operating agreement.

4  
5 **SECTION 304. NO AGENCY POWER OF MEMBER ASSOCIATED WITH**  
6 **PROTECTED SERIES.**

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

9 (b) A person’s status as member associated with a protected series does not prevent or  
10 restrict law other than this [act] from imposing liability on the protected series because of the  
11 person’s conduct.

12 **Comment**

13  
14 This section is derived essentially verbatim from Uniform Limited Liability Company Act  
15 (2013) § 301.

16  
17 **[ARTICLE] 4**

18 **LIMITATIONS ON LIABILITY AND ENFORCEMENT OF CLAIMS**

19 **SECTION 401. LIMITATIONS ON LIABILITY.**

20 (a) Subject to subsection (c):

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

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

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

1 (A) having established the protected series;  
2 (B) being or acting as a series governor of the protected series: or  
3 (C) having the protected series be or act as a manager of the company;  
4 (4) a protected series is not liable, directly or indirectly, by way of contribution or  
5 otherwise, for a debt, obligation, or other liability of the series limited liability company or  
6 another protected series solely by reason of:

7 (A) being a protected series of the company or having as a series governor  
8 the company or another protected series of the company; or

9 (B) being or acting as a manager of the company or a series governor of  
10 another protected series of the company.

11 (b) Subject to subsection (c), a person is not liable, directly or indirectly, by way of  
12 contribution or otherwise, for a debt, obligation, or other liability of a series limited liability  
13 company or a protected series of the company solely by reason of being or acting as a member of  
14 the company, a member associated with the protected series, a manager of the company, or a  
15 series governor of the protected series.

16 (c) Subsections (a) and (b) apply as if each protected series were a limited liability  
17 company, and a claim to disregard a limitation stated in subsection (a) or (b) is under the  
18 principles of law and equity that would apply if each protected series were a limited liability  
19 company, including principles:

20 (1) providing rights to creditors; and

21 (2) holding one entity, organization, association, or person liable for the debt,  
22 obligation, or other liability of another entity, organization, association, or person.

23 (d) If a claimant succeeds in having a court disregard:

1 (1) a limitation stated in Section 401(a)(1) or (3), the claimant may enforce the  
2 resulting judgment against all property owned by the company regardless of whether the  
3 property is associated with the company;

4 (2) a limitation stated in Section 401(a)(2) or (4) to the prejudice of the series  
5 limited liability company, the claimant may enforce the resulting judgment against all property  
6 owned by the series limited liability company regardless of whether the property is associated  
7 with the company; or

8 (3) a limitation stated in 401(a)(2) or (4) to the prejudice of another protected  
9 series of the series limited liability company, the claimant may enforce the resulting judgment  
10 against all property owned by the other protected series regardless of whether the property is  
11 associated with the other protected series.

12 Query and Note to the Drafting Committee

13  
14 Subsection (c) – See Section 107, the Query entitled “Should Uniform Limited Liability  
15 Company Act (2013) § 304(b) Apply to the Horizontal Shields?”

16  
17 Should Subsection (d) Be Relegated to a Comment?

18  
19 **Comment**

20  
21 **Subsection (a)** – This subsection establishes the “horizontal” shields that are the defining  
22 characteristic of a series limited liability company. See Reporter’s Introductory Note, ¶ 7. The  
23 shields pertain only to vicarious liability due solely to status.

24  
25 **Subsection (b)** – This subsection establishes the traditional vertical shield with regard to  
26 protected series and is based on Uniform Limited Liability Company Act (2103) § 304(a). The  
27 subsection also provides a shield for members from “a debt, obligation, or other liability of a  
28 series limited liability company,” which is redundant of a limited liability company’s traditional,  
29 vertical shield. The redundancy is intended to preclude any argument that the traditional, vertical  
30 liability shield of a limited liability company is somehow affected when the company establishes  
31 one or more protected series.

32  
33 **Subsection (c)** – Section 107 extrapolates Uniform Limited Liability Company Act  
34 (2013) § 111, which provides generally that “[u]nless displaced by particular provisions of this  
35 [act], the principles of law and equity supplement this [act] {i.e. Uniform Limited Liability

1 Company Act (2013)).” This subsection’s specific references to particular categories of  
2 “principles... of law or equity” should not be interpreted as limiting the effect of Uniform  
3 Limited Liability Company Act (2013) § 111. This subsection encompasses outside reverse  
4 piercing claims (to the extent a state allows such claims) but by its terms does not address inside  
5 reverse piercing claims. A successful inside reverse pierce does not disregard a liability shield  
6 but rather permits an entity’s owner to enjoy and exercise a right belonging to the entity.  
7

8 **Subsection (d)** – Suppose, for example, a piercing claim succeeds and as a result a series  
9 limited liability company is adjudged liable for a debt of a protected series. The association *vel*  
10 *non* of the company’s property is irrelevant vis-à-vis the judgment debtor. The judgment debtor  
11 will be enforcing a judgment against the company itself; naturally all the company’s property is  
12 subject to enforcement.  
13

14 **SECTION 402. LIMITATIONS ON ENFORCEMENT OF CLAIMS AGAINST**  
15 **ASSOCIATED PROPERTY**

16 (a) Subject to subsection (c) and Section 401:

17 (1) A claim against a series limited liability company may be enforced against an  
18 item of property owned by a protected series of the company only if the item:

19 (A) is not associated with the protected series when enforcement is sought;

20 or

21 (B) was owned by the protected series but not associated with it when the  
22 liability giving rise to the claim was incurred.

23 (2) A claim against a protected series may be enforced against an item of property  
24 owned by the series limited liability company that established the protected series or another  
25 protected series of the company only if the item:

26 (A) is not associated with the company or other protected series when  
27 enforcement is sought; or

28 (B) was owned by the company or other protected series but not associated  
29 with the company or other protected series when the liability giving rise to the claim was  
30 incurred.

- 1 (b) This section does not affect principles or rules of law or equity pertaining to:
- 2 (1) fraudulent or voidable conveyances, transfers, or transactions;
- 3 (2) liens, mortgages, security interests; or
- 4 (3) other principles or rules of law or equity under which ownership of property
- 5 may be determined.

6 Note and Query to the Drafting Committee

7

8 One reviewer of the feedback version considers “item of” inappropriate in this context,  
9 because “‘item of property’ [does not work] well with real property, intangible personal property,  
10 fungible personal property, or money. Moreover, it is a term of art in UCC Article [5] law.” The  
11 reviewer has suggested considering other language, such as ‘identified property’ ‘particular  
12 property’ ‘specific property’.” The Reporter prefers “item of” but seeks direction from the  
13 Drafting Committee.

14

15 **Comment**

16

17 This section applies to enforcement of judgments by levy, attachment, judicial sale, or  
18 other means and to pre-enforcement remedies of any kind.

19

20 Uniform Limited Liability Company Act § 304(b) does not affect this section, because  
21 extrapolating that provision would conflict with this section. See Section 107(b)(1). This section  
22 does not mention charging orders because those orders affect the property rights of members, not  
23 the property of a series limited liability company or protected series.

24

25 **Subsection (b)** – Section 107 extrapolates Uniform Limited Liability Company Act  
26 (2013) § 111, which provides generally that “[u]nless displaced by particular provisions of this  
27 [act], the principles of law and equity supplement this [act] {i.e. Uniform Limited Liability  
28 Company Act (2013)}.” This subsection’s specific references to particular categories of  
29 “principles... of law or equity” should not be interpreted as limiting the effect of Uniform  
30 Limited Liability Company Act (2013) § 111.

31

32 **[ARTICLE 5]**

33 **CEASING TO BE ASSOCIATED MEMBER;**

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

35 **SECTION 501. CEASING TO BE ASSOCIATED MEMBER**

36 (a) A member associated with a protected series ceases to be associated with the

1 protected series when the member is dissociated from the series limited liability company.

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

5 (c) A member’s ceasing to be associated with a protected series does not of itself:

6 (1) change the member’s status as a member or as a member associated with  
7 another protected series; or

8 (2) discharge the member from any debt, obligation, or other liability to the  
9 protected series or to another associated member of the protected series which the member  
10 incurred while a member associated with the protected series.

11 Note to the Drafting Committee

12  
13 At its March 2015 meeting, the Drafting Committee expressed concerns about the  
14 information rights of a member that ceases to be associated with a protected series. Section 107  
15 (the extrapolation provision) addresses the issue.

16  
17 **Comment**

18  
19 The operating agreement of a series limited liability company may provide additional  
20 circumstances in which a member will cease to be associated with a protected series but may not  
21 vary subsection (a).

22  
23 **Subsection (b)** – This subsection is derived from the Uniform Limited Liability  
24 Company Act (2013) § 603(3). Subject to the operating agreement, Section (107) (extrapolation)  
25 would produce the same rule. The rule is stated here to make possible the second sentence of the  
26 definition of “series transferable interest.” See Section 102(a)(11) (“The term includes a person  
27 that owns a transferable interest under Section 501(b).”

28  
29 **SECTION 502. DISSOLUTION OF PROTECTED SERIES.** A protected series is  
30 dissolved and its activities and affairs must be wound up:

31 (1) when its series limited liability company dissolves;

32 (2) as provided in the company’s operating agreement; or

1 (3) upon the entry by [the appropriate court] of an order dissolving the company:

2 (A) on application by a member on the grounds that the conduct of all or  
3 substantially all the protected series' activities and affairs is unlawful; or

4 (B) on application by a member associated with the protected series on the  
5 grounds that:

6 (i) it is not reasonably practicable to carry on the company's activities and  
7 affairs in conformity with the operating agreement; or

8 (ii) the series governors or those members in control of the protected  
9 series:

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

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

14 Note to Drafting Committee

15  
16 Paragraph (3) is included because extrapolation may well be ineffective to establish what  
17 is not merely a claim but also jurisdiction to determine the claim.

18 **Comment**

19  
20  
21 **Paragraph (3)** – This paragraph is derived from Uniform Limited Liability Company Act  
22 (2013) § 701(a)(4).

23  
24 **Paragraph (3)(A)** – In the case of illegality any member of a series limited liability  
25 company has reason to worry. Accordingly, a member has standing under this provision  
26 regardless of whether associated with the protected series at issue.

27  
28 **Paragraph (3)(B)** – This provision refers to “those members in control” rather than  
29 “those associated members in control” because a member not associated with a protected series  
30 might nonetheless have control over the protected series.

1           **SECTION 503. WINDING UP OF DISSOLVED PROTECTED SERIES.**

2           (a) The series governor of a protected series shall manage the winding up of the activities  
3 and affairs of its protected series, but if the series governor declines or fails to manage the  
4 winding up, or the position of series governor is vacant, the series limited liability company shall  
5 manage the winding up.

6           (b) [The appropriate court] may order judicial supervision of the winding up of a  
7 dissolved protected series, including the appointment of a person to wind up the company's  
8 activities and affairs:

9                   (1) on the application of an associated member or, if the protected series has no  
10 associated members, by a member, if the applicant establishes good cause; or

11                   (2) in connection with a proceeding under Section 502(3).

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

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

17                                   Note and Queries to the Drafting Committee

18  
19           Subsection (b) – This subsection is included because extrapolation may well be ineffective to  
20 establish what is not merely a claim but also jurisdiction to determine the claim.

21  
22           Statement of Designation Cancellation – Should this act permit the filing of a statement of  
23 designation cancellation when a protected series disappears as a result of a merger? Should the  
24 filing be required? Should the answer be different if: (1) the series limited liability company is a  
25 party to the merger; and (2) both the company itself and its protected series each disappear in the  
26 merger?  
27

1 **Comments**

2  
3 For the most part, Section 107 (the extrapolation provision) supplies rules for winding up,  
4 including, e.g., limiting post-dissolution activities and affairs to winding up, delineating  
5 mandatory and permissible winding up activities.

6  
7 **[ARTICLE] 6**

8 **FOREIGN PROTECTED SERIES**

9 **SECTION 601. GOVERNING LAW.**

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

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

13 (2) the relationship between a foreign protected series of a company and:

14 (A) the company;

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

16 (C) a member of the company, regardless of whether the member is  
17 associated with the foreign protected series;

18 (D) a transferee of a transferable interest pertaining to the company; and

19 (E) a series transferee with regard to any foreign protected series of the  
20 company;

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

22 (A) the liability of a person for a debt, obligation, or other liability of a  
23 foreign protected series, if the debt, obligation, or other liability is asserted solely by reason of  
24 the person having liability in any of the following capacities:

25 (i) an associated member, series transferee, or series governor of  
26 the foreign protected series;

1 (ii) a member not associated with the protected series; or

2 (ii) a transferee; and

3 (B) the liability of a foreign series limited liability company for a debt,  
4 obligation, or other liability of a foreign protected series of the company when the debt,  
5 obligation, or other liability is asserted solely by reason of the foreign series limited liability  
6 company:

7 (i) having established the foreign protected series;

8 (ii) being or acting as a series governor of the foreign protected  
9 series: or

10 (iii) having the foreign protected series be or act as a manager of  
11 the company; and

12 (C) the liability of a foreign protected series of a foreign series limited  
13 liability company for a debt, obligation, or other liability of the company or any other foreign  
14 protected series of the company when the debt, obligation, or other liability is solely by reason of  
15 the foreign protected series:

16 (i) being a protected series of the company or having as a series  
17 governor the company or another protected series of the company; or

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

20 (b) In determining a claim within subsection (a)(3), the courts of this state apply the law  
21 of the jurisdiction of formation of the foreign series limited liability company as if Section  
22 401(c) and (d) were part of that law.

1 **Comment**

2  
3 By its terms, this section does not pertain to charging orders.

4  
5 **Subsection (a)(1)** – This provision parallels Section 105(1).

6  
7 **Subsection (a)(2)** – This provision parallels Section 105(2).

8  
9 **Subsection (a)(3)** – Each of the subparagraphs in paragraph (3) is subject to three very  
10 important exceptions. The exceptions are: (i) subsection (b) (in dealing with challenges to a  
11 shield, the “as if each were a separate LLC” rule applies as does the preservation of principles of  
12 law or equity), 602 (failure to meet association requirements puts assets “up for grabs” item by  
13 item), and 604 (transparency requirements).

14  
15 **Subsection (a)(3)(A)** – This provision parallels Section 105(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* a foreign limited liability company appears in the main body of a state’s limited  
19 liability company statute. *See, e.g.*, Uniform Limited Liability Company Act (2013) § 901(a).

20  
21 **Subsection (a)(4)(B) and (C)** – These provisions parallel respectively Section 104(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 **SECTION 602. SECTIONS OF OTHER [ARTICLES] APPLICABLE TO**  
26 **FOREIGN LIMITED LIABILITY COMPANY AND FOREIGN PROTECTED SERIES.**

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

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

32 (c) Solely for the purposes of applying subsection (a) or (b), the following rules apply:

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

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

4 **Comment**  
5

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

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

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

24 **SECTION 603. TRANACTING BUSINESS IN THIS STATE; FOREIGN**  
25 **REGISTRATION; PERSONAL JURISDICTION.**

26 (a) Subject to subsections (b), (c), and (d), the law of this state governing the registration  
27 of a foreign limited liability company to do business in this state applies to a foreign protected  
28 series as if the foreign protected series were a foreign limited liability company, except that:

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

30 (1) the name and the jurisdiction of formation of the foreign series limited liability  
31 company that established the foreign protected series; and

32 (2) the name of any other foreign protected series established by the company and  
33 still existing when the application is delivered to the [Secretary of State] for filing and the name

1 and street address of the person that is the other protected series' agent for service of process  
2 within the jurisdiction of formation of the foreign series limited liability company, regardless of  
3 whether the other foreign protected series is doing business in this state or subject to the personal  
4 jurisdiction of the courts of this state.

5 (c) The name of the foreign protected series applying for registration or registered under  
6 subsection (a) must comply with section 202.

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

9 (e) For purposes of determining whether a foreign limited liability company or foreign  
10 protected series has transacted business in this state and, except as otherwise provided in Section  
11 602(b), whether a foreign limited liability company or foreign protected series is subject to the  
12 jurisdiction of the courts of this state, the following rules apply:

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

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

### 18 **Comment**

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

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

1 This subsection is not redundant of Section 107 (the extrapolation provision), because that  
2 Section 107 applies only to domestic protected series.  
3

4 **Subsection (a)(1)** – The information required here is the information required under  
5 Section 604(a) (transparency requirement).  
6

7 **Subsection (a)(2)** – Section 202 requires that the name of a protected series either begin  
8 or end with the name of the series limited liability company. Under the first part of  
9 subsection(a), a foreign protected series may use Uniform Limited Liability Company Act  
10 (2013) § 906 (noncomplying name of foreign limited liability company) to comply with this  
11 name requirement. If a foreign series limited liability company changes its name, the company  
12 will have to change the name used in an enacting state by any of the company’s protected series  
13 registered in that state.  
14

15 **Subsection (d)** – This subsection is necessary because subsection (a) does not reach this  
16 topic, and Section 107(b)(2)(A) precludes extrapolation. That latter provision precludes any  
17 extrapolation that would “require the [Secretary of State] to ... accept for filing a type of record  
18 that neither this [act] nor [the limited liability company statute] expressly authorizes or requires  
19 to be delivered to the [Secretary of State] for filing”.  
20

21 ***Legislative Note:** Although business entity statutes typically do not provide a delayed effective  
22 date for foreign entities, an enacting state whose limited liability company statute has previously  
23 contemplated protected series should consider delaying the effective date of subsection (a)(2). In  
24 such states, subsection (a)(2) imposes a significant new requirement on foreign protected series.*  
25

26 ***Legislative Note:** If the law of an enacting state requires that a foreign limited liability  
27 company’s application to register include a statement of good standing pertaining to the  
28 company: (i) subsection (a) should be revised to two additional paragraphs to subsection (b), as  
29 shown below; (ii) a new subsection (c) should be added, as follows; and (iii) the remaining  
30 subsections should be re-lettered accordingly:*  
31

32 (b) *An application for registration under subsection must include: ....*  
33 (3) *a statement of good standing pertaining to the company; and*  
34 (4) *subject to subsection (b), a statement of good standing pertaining to the*  
35 *applicant; and ....*  
36

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

40 (1) *an affirmation of that fact by an individual on behalf of the applicant; and*  
41 (2) *a statement of good standing pertaining to the foreign series limited liability*  
42 *company.*  
43





