

One Hundred Fifth Legislature - Second Session - 2018

Introducer's Statement of Intent

LB1121

Chairperson: Senator Brett Lindstrom

Committee: Banking, Commerce and Insurance

Date of Hearing: February 06, 2018

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 1121 would adopt the Uniform Protected Series Act (UPSA), which is a uniform law promulgated by the Uniform Law Commission (ULC).

The UPSA was promulgated in response to the growing popularity of series limited liability companies in the United States. The UPSA was drafted as a “module” to be inserted into the enacting state’s existing LLC act. Consequently, Section 1 of LB 1121 clarifies that this act is a part of the Nebraska Uniform Limited Liability Company Act.

Section 2 through 8 of LB 1121 contain general provisions, such as: definitions, a description of the nature of a protected series, as well as its power, purpose, and duration; how the protected series is governed by the operating agreement of the LLC; and rules for applying certain provisions of Nebraska’s existing LLC act to protected series. The act uses the term “protected series” to highlight the internal liability shields which are a defining characteristic of the act, and to avoid confusion with the term “series,” which is often used to refer to classes of interests in business entities that do not affect liabilities to third parties. If the requirements of the UPSA are satisfied, then assets (referred to as “associated assets”) of one protected series are not available to satisfy claims of creditors of the LLC or of other protected series of the LLC.

Sections 9 through 15 explain how to establish a protected series. As a default matter, all of the members must consent to establish a protected series. Further, the LLC must deliver a protected series designation to the Secretary of State, signed by the company. These sections also provide name, registered agent, and service of process provisions, as well as methods to obtain a certificate of good standing and reporting requirements.

Sections 16 through 20 include the record-keeping requirements that must be satisfied for an asset to qualify as an “associated asset” under the act. Unless provided otherwise in the operating agreement, the owner of an asset is responsible for meeting the record-keeping requirements for the asset. These provisions are designed to provide transparency of protected series transactions. These sections also provide rules for associating members with the protected series and addresses protected series transferable interests, management, and non-associated members’ rights to information.

Sections 21 through 24 cover limitations on liability and enforcement of claims. The act provides two different types of liability shields: vertical and horizontal. The traditional vertical shield protects equity holders and managers from status-based liability for an organization’s obligations. The horizontal shield protects a protected series of a series LLC and its associated assets from liability for the debts, obligations, or other liabilities of the company or another protected series of the company. These sections contain

provisions for claims seeking to disregard limitation of liability, protected series-level charging orders for judgment creditors, and enforcement of judgments against certain assets of the company. A creditor may enforce a judgment against another protected series of a series LLC by pursuing assets owned by the company or another protected series of the company if the act's requirements are not satisfied for these other assets (or "non-associated assets"). With respect to foreign LLCs, this act follows the common law approach and applies Nebraska's jurisprudence on piercing and affiliate liability companies and foreign protected series in carefully and narrowly delineated circumstances.

Sections 25 through 27 address grounds for dissolution and provisions for winding up. Under the act, dissolution of a series LLC immediately dissolves every protected series of the company. Reinstatement of an administratively dissolved protected series or the rescinding of a voluntarily dissolved company has the same retroactive effect at the protected series level.

Sections 28 through 35 contain restrictions on mergers and other entity transactions involving LLCs and protected series. The sections provide additional definitions, and also provide that a protected series may not be a party to an entity transaction. A series LLC may be a party to a merger if each other party to the merger is an LLC, and the surviving company is not created in a merger. Furthermore, the sections include provisions dealing with plans, statements that must be filed with appropriate authorities, and effects of mergers. They also provide that a creditor's right that existed immediately before a merger may be enforced after the merger.

Sections 36 to 39 address foreign protected series. The law of the jurisdiction of formation of a foreign series LLC governs certain aspects of a foreign protected series. The sections also provide guidelines for determining whether a foreign series LLC or foreign protected series of the company is doing business in the state. The sections provide registration requirements for foreign protected series and disclosure requirements in cases where a foreign LLC or foreign protected series is a party to a proceeding in Nebraska.

Sections 40 through 45 contain miscellaneous provisions as well as transition rules for pre-existing series limited liability companies and protected series.

Section 46 repeals the original section.

Principal Introducer: _____

Senator Tyson Larson