

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB78

Hearing Date: Monday January 28, 2019
Committee On: Banking, Commerce and Insurance
Introducer: Williams
One Liner: Change provisions of the Nebraska Uniform Protected Series Act and the Nebraska Uniform Limited Liability Company Act

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	7	Senators Gragert, Howard, Kolterman, La Grone, Lindstrom, Quick, Williams
Nay:		
Absent:	1	Senator McCollister
Present Not Voting:		

Oral Testimony:

Proponents:

Senator Matt Williams
Larry Ruth
David Walker
Colleen Byelick

Representing:

Introducer
NE Uniform Law Commission
Uniform Law Commission
NE Secretary of State

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

OVERVIEW

LB78 would amend the Nebraska Uniform Protected Series Act (NUPSA), sections 21-501 to 21-542, and the Nebraska Uniform Limited Liability Act (NULLCA), sections 21-101 to 21-197, to coordinate the provisions of the two acts. The NUPSA was enacted in 2018 based on the Uniform Protected Series Act (UPSA), which was promulgated by the National Conference of Commissioners on State Laws in 2017. The UPSA provides a comprehensive framework for the formation and operation of a protected series limited Liability Company. A protected series limited liability company has both "horizontal" liability shields, as well as the standard "vertical" liability shield. Business entities provide the traditional, vertical shield--protecting the entity's owners (and their respective assets) from automatic, vicarious liability for the entity's debts. A series limited liability company provides 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 2018 legislation to enact the NUPSA provided for the NUPSA to be codified within the NULLCA, that is, it is a named act within a named act. The uniform law commissioners provided for the UPSA to be codified within the 2013 version of its Uniform Limited Liability Act. Nebraska's limited liability company act, however, is based on the 2006,

rather than the 2013, version of that act. LB78 would harmonize the provisions of the NUPSA with the NULLCA in order to make it properly functioning.

SUMMARY

AMENDMENTS TO THE NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

Section 1 would amend section 21-147 to provide for a limited liability company to be able to rescind its filing of a statement of dissolution.

Section 2 would amend section 21-192 to specify the fees paid to the Secretary of State for filing a protected-series designation, for filing an application for a certificate of authority by a foreign protected series, for filing a statement of designation change, and for filing biennial reports.

AMENDMENTS TO THE NEBRASKA UNIFORM PROTECTED SERIES ACT

Section 3 would amend section 21-507 to correct an internal reference and repeal provisions related to an outright-repealed section.

Section 4 would amend section 21-509 to provide for the filing of a protected-series designation for more than one protected series.

Section 5 would amend section 21-510 to provide that the name of a protected series must be distinguishable in the records of the Secretary of State from the name of other entities incorporated, organized, or authorized to transact business in this state. This is the Nebraska standard for name filings.

Section 6 would amend section 21-513 to harmonize terminology. Appropriate usage is certificate of "existence" rather than of certificate of "good standing" and certificate of "authority" rather than certificate of "registration."

Section 7 would amend section 21-514 to harmonize terminology. Appropriate usage is certificate of "existence" rather than certificate of "good standing."

Section 8 would amend section 21-517 to correct usage of a defined term.

Section 9 would amend section 21-520 to correct usage of a defined term.

Section 10 would amend section 21-521 to harmonize terminology. Appropriate usage is "authorized" rather than "registered."

Section 11 would amend section 21-522 to correct an internal reference.

Section 12 would amend section 21-523 to harmonize terminology. Appropriate usage is "authorized" rather than "registered."

Section 13 would amend section 21-525 to provide that when a protected series of a protected series limited liability company dissolves, the company "shall" rather than "may" file a statement of protected-series dissolution with the Secretary of State.

Section 14 would amend section 21-526 to correct an internal reference.

Section 15 would amend section 21-528 to harmonize terminology. Appropriate usage is "organization" rather than "entity."

Section 16 would amend section 21-529 to harmonize terminology. Appropriate usage is "organization" rather than "entity."

Section 17 would amend section 21-532 to harmonize terminology. Appropriate usage is "articles" of merger rather than "statement" of merger.

Section 18 would amend section 21-534 to insert a missing word.

Section 19 would amend section 21-537 to provide for what an application by a foreign protected series of a foreign series limited liability company for a certificate of authority to do business in this state must include if the jurisdiction of formation of the foreign series limited liability company does not provide for issuance of a certificate of existence or equivalent for a foreign protected series. This section would harmonize filing requirements related to the name of a foreign protected series. This section would harmonize requirements for a foreign protected series of a foreign series limited liability company to amend its application for a certificate of authority if there is a change in information related to the foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company. This section would also harmonize terminology. Appropriate usage is "authorization" and "certificate of authority" rather than "registration."

Section 20 would amend section 21-539 to clarify a reference to the uniform act as promulgated by the uniform law commissioners.

MISCELLANEOUS

Section 21 would provide that sections 2 to 20, 23, and 24 become operative on January 1, 2021. That is the operative of the original 2018 enactment of the Nebraska Uniform Protected Series Act.

Sections 22 and 23 would provide for repeaters.

Section 24 would provide for outright repeal of section 21-541 which is based on a section in the UPSA that provides transitional provisions for a state that enacts its version of the UPSA, but already has some manner of protected series provisions in its statutes. This section is unnecessary for Nebraska and can be repealed as surplus age.

Matt Williams, Chairperson