

Legislature - First Session - 2019

Introducer's Statement of Intent

LB78

Chairperson: Senator Matt Williams

Committee: Banking, Commerce and Insurance

Date of Hearing: January 28, 2019

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

LB78 would amend the Nebraska Uniform Protected Series Act (NUPSA), sections 21-501 to 21-542, and the Nebraska Uniform Limited Liability Company Act, sections 21-101 to 21-197 (NULLCA), to coordinate the provisions of the two acts. The NUPSA was enacted by LB1121 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 is the first comprehensive statute governing series limited liability companies.

A series limited liability company offers two "liability shields"--the traditional vertical shield, which protects the limited liability company's owners, including members associated with a protected series of the limited liability company, from status liability for obligations of the limited liability company and of the protected series, and a new horizontal liability shield. The horizontal liability shield exists when a limited liability company establishes one or more protected series of identifiable assets and various requirements of the UPSA are satisfied. A protected series properly established and maintained under the UPSA is shielded from liability for the obligations of the limited liability company and other protected series of the limited liability company, so judgment creditors of the limited liability company and other protected series of the limited liability company may not satisfy their claims against assets of the protected series. The UPSA provides comprehensive recordkeeping requirements and transparency provisions.

The uniform law commissioners provided for the UPSA to be enacted as part of a state's already existing Uniform Limited Liability Company Act (ULLCA), that is, as an act within an act. Nebraska followed that course in 2018. However, Nebraska's ULLCA is based on the 2006, rather than the 2013, version of the ULLCA. The UPSA is structured to fit within the 2013 act, but not within the 2006 act. LB1121, as enacted in 2018, did not include any critical edits to address this matter. This year, LB78 does just that.

This bill makes a number of clarifications and corrections. The bill would fill in gaps in the area of filing requirements. The bill would provide for use of the existing requirements for business entity name filings. The bill would correct internal statutory references and provide for correct usage of defined terms. The bill would harmonize terminology. Certificate of "existence" would replace certificate of "good standing." Certificate of "authority" would replace certificate of "registration." "Authorized" would replace "registered." "Organization" would replace "entity." "Articles" of merger would replace "statement" of merger. The bill would provide filing requirements for a foreign protected series of a foreign series limited liability company. The bill would outright repeal a section of the NUPSA as unnecessary because it has utility only in a state that already has protected series statutes on its books. Nebraska does not. The changes in this bill are clean-up, clarifying, and gap-filling. They do not change the substantive direction of last year's LB1121.

The changes to the NUPSA under this bill would become operative on January 1, 2021, which is also the operative date of LB1121 of 2018, which originally enacted the NUPSA.

Principal Introducer: _____

Senator Matt Williams