

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 168**

Introduced by Larson, 40.

Read first time January 14, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Uniform Limited Liability Company  
2 Act; to amend section 21-101, Reissue Revised Statutes of  
3 Nebraska; to authorize series limited liability  
4 companies; to harmonize provisions; and to repeal the  
5 original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 21-101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           21-101 (ULLCA 101) Sections 21-101 to 21-197 and sections  
4 2 to 7 of this act shall be known and may be cited as the Nebraska  
5 Uniform Limited Liability Company Act.

6           Sec. 2. (a) An operating agreement may establish or  
7 provide for the establishment of a designated series of transferable  
8 interests having separate rights, powers, or duties with respect to  
9 specified property or obligations of the limited liability company or  
10 profits and losses associated with specified property or obligations,  
11 and, to the extent provided in the operating agreement, any such  
12 series may have a separate business purpose or investment objective.  
13 The name of each series must contain the name of the limited  
14 liability company and be distinguishable from the name of any other  
15 series set forth in the certificate of organization.

16           (b) Notwithstanding contrary provisions of the Nebraska  
17 Uniform Limited Liability Company Act, the debts, liabilities, and  
18 obligations incurred, contracted for, or otherwise existing with  
19 respect to a particular series shall be enforceable against the  
20 assets of that series only, and not against the assets of the limited  
21 liability company generally, or any other series thereof, if all of  
22 the following apply:

23           (1) The operating agreement creates one or more series;

24           (2) Separate and distinct records are maintained for that  
25 series and separate and distinct records account for the assets

1 associated with that series. The assets associated with a series must  
2 be accounted for separately from the other assets of the limited  
3 liability company, including another series;

4 (3) The operating agreement provides for such limitation  
5 on liabilities; and

6 (4) Notice of the establishment of the series and of the  
7 limitation on liabilities of the series is set forth in the  
8 certificate of organization of the limited liability company. The  
9 filing of the certificate of organization containing a notice of the  
10 limitation on liabilities of a series in the office of the Secretary  
11 of State constitutes notice of the limitation on liabilities of such  
12 series.

13 (c) A series meeting all of the conditions of subsection  
14 (b) of this section shall be treated as a separate entity to the  
15 extent set forth in the certificate of organization with the power  
16 and capacity to contract, hold title to assets, grant liens and  
17 security interests, and sue and be sued in its own capacity.

18 (d) Notwithstanding section 21-129, or a contrary  
19 provision in an operating agreement, a member or manager may agree to  
20 be obligated personally for any or all of the debts, obligations, or  
21 liabilities of one or more series.

22 (e) An operating agreement may provide for classes or  
23 groups of members or managers associated with a series having such  
24 relative rights, powers, and duties as the operating agreement may  
25 provide. The operating agreement may provide for the future creation

1 of additional classes or groups of members or managers associated  
2 with the series having such relative rights, powers, and duties as  
3 may from time to time be established, including rights, powers, and  
4 duties senior to existing classes and groups of members or managers  
5 associated with the series. An operating agreement may provide for  
6 the taking of an action, including the amendment of the operating  
7 agreement, without the vote or approval of any member or manager or  
8 class or group of members or managers, including all action to create  
9 under the provisions of the operating agreement a class or group of  
10 the series of membership interests that was not previously  
11 outstanding. An operating agreement may provide that any member or  
12 class or group of members associated with a series does not have  
13 voting rights.

14 (f) An operating agreement may grant to all or certain  
15 identified members or managers or a specified class or group of the  
16 members or managers associated with a series the right to vote on any  
17 matter separately or with all or any class or group of the members or  
18 managers associated with the series. Voting by members or managers  
19 associated with a series may be on a per capita, number, financial  
20 interest, class, group, or other basis.

21 (g) Except to the extent modified by sections 2 to 7 of  
22 this act, the provisions of the act which are generally applicable to  
23 a limited liability company, and its managers, members, and  
24 transferees, shall be applicable to each series with respect to the  
25 operations of such series.

1           Sec. 3. (a) A series is member-managed unless the  
2 operating agreement does any of the following:

3           (1) Expressly provides any of the following:

4           (A) The series is or will be manager-managed;

5           (B) The series is or will be managed by managers; or

6           (C) Management of the series is or will be vested in  
7 managers; or

8           (2) Includes words of similar import.

9           (b) In a member-managed series, unless modified pursuant  
10 to subsections (e) and (f) of section 2 of this act, all of the  
11 following rules apply:

12           (1) The management and conduct of the series are vested  
13 in the members of the series;

14           (2) Each series member has equal rights in the management  
15 and conduct of the series' activities;

16           (3) A difference arising among series members as to a  
17 matter in the ordinary course of the activities of the series may be  
18 decided by a majority of the series members;

19           (4) An act outside the ordinary course of the activities  
20 of the series may be undertaken only with the consent of all members  
21 of the series; and

22           (5) The operating agreement may be amended only with the  
23 consent of all members of the series.

24           (c) In a manager-managed series, all of the following  
25 rules apply:

1           (1) Except as otherwise expressly provided in the  
2 Nebraska Uniform Limited Liability Company Act, any matter relating  
3 to the activities of the series is decided exclusively by the  
4 managers of the series;

5           (2) Each series manager has equal rights in the  
6 management and conduct of the activities of the series;

7           (3) A difference arising among managers of a series as to  
8 a matter in the ordinary course of the activities of the series may  
9 be decided by a majority of the managers of the series;

10           (4) Unless modified pursuant to subsections (e) and (f)  
11 of section 2 of this act, the consent of all members of the series is  
12 required to do any of the following:

13           (A) Sell, lease, exchange, or otherwise dispose of all,  
14 or substantially all, of the series' property, with or without the  
15 goodwill, outside the ordinary course of the series' activities;

16           (B) Approve a merger, conversion, or domestication under  
17 sections 21-170 to 21-184;

18           (C) Undertake any other act outside the ordinary course  
19 of the series' activities; or

20           (D) Amend the operating agreement as it pertains to the  
21 series;

22           (5) A manager of the series may be chosen at any time by  
23 the consent of a majority of the members of the series and remains a  
24 manager of the series until a successor has been chosen, unless the  
25 series manager at an earlier time resigns, is removed, or dies, or,

1 in the case of a series manager that is not an individual,  
2 terminates. A series manager may be removed at any time by the  
3 consent of a majority of the members without notice or cause;

4 (6) A person need not be a series member to be a manager  
5 of a series, but the dissociation of a series member that is also a  
6 series manager removes the person as a manager of the series. If a  
7 person that is both a series manager and a series member ceases to be  
8 a manager of the series, that cessation does not by itself dissociate  
9 the person as a member of the series; and

10 (7) A person's ceasing to be a series manager does not  
11 discharge any debt, obligation, or other liability to the series or  
12 members of the series which the person incurred while a manager of  
13 the series.

14 (d) An action requiring the consent of members of a  
15 series under the act may be taken without a meeting, and a member of  
16 a series may appoint a proxy or other agent to consent or otherwise  
17 act for the series member by signing an appointing record, personally  
18 or by the series member's agent.

19 (e) The dissolution of a series does not affect the  
20 applicability of this section. However, a person that wrongfully  
21 causes dissolution of the series loses the right to participate in  
22 management as a series member and a series manager.

23 (f) The act does not entitle a series member of a series  
24 to remuneration for services performed for a member-managed series,  
25 except for reasonable compensation for services rendered in winding

1 up the activities of the series.

2           Sec. 4. (a) Any distribution made by a series before its  
3 dissolution and winding up must be in equal shares among the series  
4 members and dissociated series members, except to the extent  
5 necessary to comply with any transfer effective under section 21-141  
6 and any charging order in effect under section 21-142.

7           (b) A person has a right to a distribution before the  
8 dissolution and winding up of a series only if the series decides to  
9 make an interim distribution. A person's dissociation does not  
10 entitle the person to a distribution.

11           (c) A person does not have a right to demand or receive a  
12 distribution from a series in any form other than money. Except as  
13 otherwise provided in subsection (c) of section 21-154, a series may  
14 distribute an asset in kind if each part of the asset is fungible  
15 with each other part and each person receives a percentage of the  
16 asset equal in value to the person's share of distributions.

17           (d) If a series member or transferee becomes entitled to  
18 receive a distribution, the series member or transferee has the  
19 status of, and is entitled to all remedies available to, a creditor  
20 of the series with respect to the distribution.

21           (e)(1) A series shall not make a distribution if after  
22 the distribution any of the following occurs:

23           (A) The series would not be able to pay its debts as they  
24 become due in the ordinary course of the series' activities; or

25           (B) The series' total assets would be less than the sum

1 of its total liabilities plus the amount that would be needed, if the  
2 series were to be dissolved, wound up, and terminated at the time of  
3 the distribution, to satisfy the preferential rights upon  
4 dissolution, winding up, and termination of members whose  
5 preferential rights are superior to those of persons receiving the  
6 distribution.

7 (2) As used in subdivision (e)(1) of this section,  
8 distribution does not include amounts constituting reasonable  
9 compensation for present or past services or reasonable payments made  
10 in the ordinary course of business under a bona fide retirement plan  
11 or other benefits program.

12 (f) A series may base a determination that a distribution  
13 is not prohibited under subsection (a) of this section on financial  
14 statements prepared on the basis of accounting practices and  
15 principles that are reasonable in the circumstances or on a fair  
16 valuation or other method that is reasonable under the circumstances.

17 (g) Except as otherwise provided in subsection (i) of  
18 this section, the effect of a distribution under subsection (a) of  
19 this section is measured as follows:

20 (1) In the case of a distribution by purchase,  
21 redemption, or other acquisition of a transferable interest in the  
22 series, as of the date money or other property is transferred or debt  
23 incurred by the series; and

24 (2) In all other cases, as of the date when one of the  
25 following occurs:

1           (A) The distribution is authorized, if the payment occurs  
2 within one hundred twenty days after that date; or

3           (B) The payment is made, if the payment occurs more than  
4 one hundred twenty days after the distribution is authorized.

5           (h) A series' indebtedness to a series member incurred by  
6 reason of a distribution made in accordance with this section is at  
7 parity with the series' indebtedness to its general, unsecured  
8 creditors.

9           (i) A series' indebtedness, including indebtedness issued  
10 in connection with or as part of a distribution, is not a liability  
11 for purposes of subsection (e) of this section if the terms of the  
12 indebtedness provide that payment of principal and interest are made  
13 only to the extent that a distribution could be made to members of  
14 the series under this section. If such indebtedness is issued as a  
15 distribution, each payment of principal or interest on the  
16 indebtedness is treated as a distribution, the effect of which is  
17 measured on the date the payment is made.

18           (j)(1) Except as otherwise provided in subdivision (j)(2)  
19 of this section, if a member of a member-managed series or manager of  
20 a manger-managed series consents to a distribution made in violation  
21 of this section and in consenting to the distribution fails to comply  
22 with section 21-138, the member or manager is personally liable to  
23 the series for the amount of the distribution that exceeds the amount  
24 that could have been distributed without the violation of this  
25 section.

1           (2) To the extent the operating agreement of a member-  
2 managed series expressly relieves a series member of the authority  
3 and responsibility to consent to distributions and imposes that  
4 authority and responsibility on one or more other members of the  
5 series, the liability stated in subdivision (j)(1) of this section  
6 applies to the other members of the series and not the member of the  
7 series that the operating agreement relieves of authority and  
8 responsibility.

9           (k) A person that receives a distribution knowing that  
10 the distribution to that person was made in violation of this section  
11 is personally liable to the limited liability company but only to the  
12 extent that the distribution received by the person exceeded the  
13 amount that could have been properly paid under this section.

14           (l) A person against which an action is commenced because  
15 the person is liable under subsection (j) of this section may do any  
16 of the following:

17           (1) Implead any other person that is subject to liability  
18 under subsection (j) of this section and seek to compel contribution  
19 from the person; or

20           (2) Implead any person that received a distribution in  
21 violation of subsection (k) of this section and seek to compel  
22 contribution from the person in the amount the person received in  
23 violation of that subsection.

24           (m) An action under this section is barred if not  
25 commenced within two years after the distribution.

1           Sec. 5. Unless otherwise provided in the operating  
2 agreement, a member shall cease to be associated with a series and to  
3 have the power to exercise any rights or powers of a member with  
4 respect to such series upon the assignment of all of the member's  
5 transferable interest with respect to such series. Except as  
6 otherwise provided in an operating agreement, an event under the  
7 Nebraska Uniform Limited Liability Company Act or identified in an  
8 operating agreement that causes a member to cease to be associated  
9 with a series, by itself, shall not cause such member to cease to be  
10 associated with any other series or terminate the continued  
11 membership of a member in the limited liability company.

12           Sec. 6. (a) Except to the extent otherwise provided in  
13 the operating agreement, a series may be terminated and its affairs  
14 wound up without causing the dissolution of the limited liability  
15 company. The termination of a series established pursuant to  
16 subsection (a) of section 2 of this act shall not affect the  
17 limitation on a liability of such series provided by subsection (b)  
18 of section 2 of this act. A series is terminated and its affairs  
19 shall be wound up upon the dissolution of the limited liability  
20 company under sections 21-147 to 21-154.

21           (b) Notwithstanding section 21-148, unless otherwise  
22 provided in the operating agreement, any of the following persons may  
23 wind up the affairs of a series:

24           (1) A manager associated with a series who has not  
25 wrongfully terminated the series;

1           (2) If there is no manager of a series, the members  
2 associated with the series or a person approved by the members  
3 associated with the series; or

4           (3) If there is more than one class or group of members  
5 associated with the series, then by each class or group of members  
6 associated with the series, in either case, by members who own more  
7 than fifty percent of the transferable interests of the series owned  
8 by all of the members associated with the series or by the members of  
9 each class or group associated with the series.

10           (c) The persons winding up the affairs of a series, in  
11 the name of the series and for and on behalf of the series, may take  
12 all actions with respect to the series as are permitted under section  
13 21-148 for a limited liability company. The persons winding up the  
14 affairs of a series shall provide for the claims and obligations of  
15 the series as provided in section 21-154 for a limited liability  
16 company and distribute the assets of the series as provided in  
17 section 21-154 for a limited liability company. An action taken  
18 pursuant to this subsection shall not affect the liability of a  
19 member and shall not impose liability on a liquidating trustee.

20           Sec. 7. A foreign limited liability company that is  
21 authorized to do business in this state under sections 21-155 to  
22 21-163 which is governed by an operating agreement that establishes  
23 or provides for the establishment of designated series of  
24 transferable interests having separate rights, powers, or duties with  
25 respect to specified property or obligations of the foreign limited

1 liability company, or profits and losses associated with the  
2 specified property or obligations, shall indicate that fact on the  
3 application for a certificate of authority as a foreign limited  
4 liability company. In addition, the foreign limited liability company  
5 shall state on the application whether the debts, liabilities, and  
6 obligations incurred, contracted for, or otherwise existing with  
7 respect to a particular series, if any, are enforceable against the  
8 assets of such series only, and not against the assets of the foreign  
9 limited liability company generally.

10           Sec. 8. Original section 21-101, Reissue Revised Statutes  
11 of Nebraska, is repealed.