

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT
LB1121

Hearing Date: Tuesday February 06, 2018
Committee On: Banking, Commerce and Insurance
Introducer: Larson
One Liner: Adopt the Nebraska Uniform Protected Series Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Baker, Brewer, Harr, Kolterman, Lindstrom, McCollister, Schumacher, Williams
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:
Senator Tyson Larson

Representing:
Introducer

Opponents:

Representing:

Neutral:
Larry Ruth
Colleen Byelick

Representing:
NE Uniform Law Commission
Secretary of State

Summary of purpose and/or changes:

This bill would enact the Nebraska Uniform Protected Series Act based on the Uniform Protected Series Act (UPSA) as promulgated by the National Conference of Commissioners on Uniform State Laws in 2017. The UPSA is the first comprehensive statute governing series limited liability companies. A series LLC offers two "liability shields" - the traditional vertical shield, which protects the LLC's owners, including members associated with a protected series, from status liability for obligations of the LLC and of the protected series, and a new horizontal liability shield. The horizontal liability shield exists when an LLC 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 act is shielded from liability for the obligations of the LLC and other protected series of the LLC, so judgment creditors of the LLC and other protected series of the LLC may not satisfy their claims against assets of the protected series. The UPSA provides comprehensive recordkeeping requirements and transparency provisions. LB1121 provides for the UPSA to be integrated within the Nebraska Uniform Limited Liability Company Act, originally enacted in 2010. The contents of the bill are as follows:

Section 1. Amends section 21-101 to assign the Nebraska Uniform Protected Series within the Nebraska Uniform Limited Liability Company Act.

GENERAL PROVISIONS

Section 2. Short title.

Section 3. Definitions.

Section 4. Nature of protected series.

Section 5. Powers and duration of protected series.

Section 6. Governing law.

Section 7. Relation of operating agreement, this act, and the Nebraska Uniform Limited Liability Company Act.

Section 8. Additional limitations on operating agreement.

Section 9. Rules for applying the Nebraska Uniform Limited Liability Company Act to specified provisions of this act.

ESTABLISHING PROTECTED SERIES

Section 10. Protected series designation; amendment.

Section 11. Name.

Section 12. Registered agent.

Section 13. Service of process, notice, demand, or other record.

Section 14. Certificate of good standing for protected series.

Section 15. Information required in biennial report; effect of failure to provide.

ASSOCIATED ASSET; ASSOCIATED MEMBER; PROTECTED-SERIES TRANSFERABLE INTEREST; MANAGEMENT; RIGHT OF INFORMATION

Section 16. Associated asset.

Section 17. Associated member.

Section 18. Protected-series transferable interest.

Section 19. Management.

Section 20. Right of person not associated member of protected series to information concerning protected series.

LIMITATION OF LIABILITY AND ENFORCEMENT OF CLAIMS

Section 21. Limitations on liability.

Section 22. Claim seeking to disregard limitation of liability.

Section 23. Remedies of judgment creditor of associated member or protected-series transferee.

Section 24. Enforcement against non-associated asset.

DISSOLUTION AND WINDING UP OF PROTECTED SERIES

Section 25. Events causing dissolution of protected series.

Section 26. Winding up dissolved protected series.

Section 27. Effect of reinstatement of series limited liability company or revocation of voluntary dissolution.

ENTITY TRANSACTIONS RESTRICTED

Section 28. Definitions.

Section 29. Protected series may not be party to entity transaction.

Section 30. Restriction on entity transaction involving protected series.

Section 31. Merger authorized; parties restricted.

Section 32. Plan of merger.

Section 33. Statement of merger.

Section 34. Effect of merger.

Section 35. Application of section 24 after merger.

FOREIGN PROTECTED SERIES

Section 36. Governing law.

Section 37. No attribution of activities constituting doing business or for establishing jurisdiction.

Section 38. Registration of foreign protected series.

Section 39. Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

MISCELLANEOUS PROVISIONS

Section 40. Uniformity of application and construction.

Section 41. Relation to Electronic Signatures in Global and National Commerce Act.

Section 42. Transitional provisions.

Section 43. Savings clause.

Section 44. Operative date.

Section 45. Severability clause.

Section 46. Repealer of amendatory section.

Explanation of amendments:

The committee amendments would change the operative date of the bill and related transition dates. The operative date would be moved from January 1, 2019 to January 1, 2021. The committee amendments also would change occurrences of "effective date" to "operative date" where necessary.

