

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 292**

Introduced by Larson, 40.

Read first time January 11, 2017

Committee: Banking, Commerce and Insurance

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

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

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

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

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

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

23 (2) Separate and distinct records are maintained for that series and  
24 separate and distinct records account for the assets associated with that  
25 series. The assets associated with a series must be accounted for  
26 separately from the other assets of the limited liability company,  
27 including another series;

28 (3) The operating agreement provides for such limitation on  
29 liabilities; and

30 (4) Notice of the establishment of the series and of the limitation  
31 on liabilities of the series is set forth in the certificate of

1 organization of the limited liability company. The filing of the  
2 certificate of organization containing a notice of the limitation on  
3 liabilities of a series in the office of the Secretary of State  
4 constitutes notice of the limitation on liabilities of such series.

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

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

14 (e) An operating agreement may provide for classes or groups of  
15 members or managers associated with a series having such relative rights,  
16 powers, and duties as the operating agreement may provide. The operating  
17 agreement may provide for the future creation of additional classes or  
18 groups of members or managers associated with the series having such  
19 relative rights, powers, and duties as may from time to time be  
20 established, including rights, powers, and duties senior to existing  
21 classes and groups of members or managers associated with the series. An  
22 operating agreement may provide for the taking of an action, including  
23 the amendment of the operating agreement, without the vote or approval of  
24 any member or manager or class or group of members or managers, including  
25 all action to create under the provisions of the operating agreement a  
26 class or group of the series of membership interests that was not  
27 previously outstanding. An operating agreement may provide that any  
28 member or class or group of members associated with a series does not  
29 have voting rights.

30 (f) An operating agreement may grant to all or certain identified  
31 members or managers or a specified class or group of the members or

1 managers associated with a series the right to vote on any matter  
2 separately or with all or any class or group of the members or managers  
3 associated with the series. Voting by members or managers associated with  
4 a series may be on a per capita, number, financial interest, class,  
5 group, or other basis.

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

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

12 (1) Expressly provides any of the following:

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

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

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

16 (2) Includes words of similar import.

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

20 (1) The management and conduct of the series are vested in the  
21 members of the series;

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

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

27 (4) An act outside the ordinary course of the activities of the  
28 series may be undertaken only with the consent of all members of the  
29 series; and

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

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

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

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

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

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

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

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

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

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

21           (5) A manager of the series may be chosen at any time by the consent  
22 of a majority of the members of the series and remains a manager of the  
23 series until a successor has been chosen, unless the series manager at an  
24 earlier time resigns, is removed, or dies, or, in the case of a series  
25 manager that is not an individual, terminates. A series manager may be  
26 removed at any time by the consent of a majority of the members without  
27 notice or cause;

28           (6) A person need not be a series member to be a manager of a  
29 series, but the dissociation of a series member that is also a series  
30 manager removes the person as a manager of the series. If a person that  
31 is both a series manager and a series member ceases to be a manager of

1 the series, that cessation does not by itself dissociate the person as a  
2 member of the series; and

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

6 (d) An action requiring the consent of members of a series under the  
7 act may be taken without a meeting, and a member of a series may appoint  
8 a proxy or other agent to consent or otherwise act for the series member  
9 by signing an appointing record, personally or by the series member's  
10 agent.

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

15 (f) The act does not entitle a series member of a series to  
16 remuneration for services performed for a member-managed series, except  
17 for reasonable compensation for services rendered in winding up the  
18 activities of the series.

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

24 (b) A person has a right to a distribution before the dissolution  
25 and winding up of a series only if the series decides to make an interim  
26 distribution. A person's dissociation does not entitle the person to a  
27 distribution.

28 (c) A person does not have a right to demand or receive a  
29 distribution from a series in any form other than money. Except as  
30 otherwise provided in subsection (c) of section 21-154, a series may  
31 distribute an asset in kind if each part of the asset is fungible with

1 each other part and each person receives a percentage of the asset equal  
2 in value to the person's share of distributions.

3 (d) If a series member or transferee becomes entitled to receive a  
4 distribution, the series member or transferee has the status of, and is  
5 entitled to all remedies available to, a creditor of the series with  
6 respect to the distribution.

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

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

11 (B) The series' total assets would be less than the sum of its total  
12 liabilities plus the amount that would be needed, if the series were to  
13 be dissolved, wound up, and terminated at the time of the distribution,  
14 to satisfy the preferential rights upon dissolution, winding up, and  
15 termination of members whose preferential rights are superior to those of  
16 persons receiving the distribution.

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

21 (f) A series may base a determination that a distribution is not  
22 prohibited under subsection (a) of this section on financial statements  
23 prepared on the basis of accounting practices and principles that are  
24 reasonable in the circumstances or on a fair valuation or other method  
25 that is reasonable under the circumstances.

26 (g) Except as otherwise provided in subsection (i) of this section,  
27 the effect of a distribution under subsection (a) of this section is  
28 measured as follows:

29 (1) In the case of a distribution by purchase, redemption, or other  
30 acquisition of a transferable interest in the series, as of the date  
31 money or other property is transferred or debt incurred by the series;

1 and

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

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

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

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

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

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

27 (2) To the extent the operating agreement of a member-managed series  
28 expressly relieves a series member of the authority and responsibility to  
29 consent to distributions and imposes that authority and responsibility on  
30 one or more other members of the series, the liability stated in  
31 subdivision (j)(1) of this section applies to the other members of the

1 series and not the member of the series that the operating agreement  
2 relieves of authority and responsibility.

3 (k) A person that receives a distribution knowing that the  
4 distribution to that person was made in violation of this section is  
5 personally liable to the limited liability company but only to the extent  
6 that the distribution received by the person exceeded the amount that  
7 could have been properly paid under this section.

8 (1) A person against which an action is commenced because the person  
9 is liable under subsection (j) of this section may do any of the  
10 following:

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

14 (2) Implead any person that received a distribution in violation of  
15 subsection (k) of this section and seek to compel contribution from the  
16 person in the amount the person received in violation of that subsection.

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

19 Sec. 5. Unless otherwise provided in the operating agreement, a  
20 member shall cease to be associated with a series and to have the power  
21 to exercise any rights or powers of a member with respect to such series  
22 upon the assignment of all of the member's transferable interest with  
23 respect to such series. Except as otherwise provided in an operating  
24 agreement, an event under the Nebraska Uniform Limited Liability Company  
25 Act or identified in an operating agreement that causes a member to cease  
26 to be associated with a series, by itself, shall not cause such member to  
27 cease to be associated with any other series or terminate the continued  
28 membership of a member in the limited liability company.

29 Sec. 6. (a) Except to the extent otherwise provided in the  
30 operating agreement, a series may be terminated and its affairs wound up  
31 without causing the dissolution of the limited liability company. The

1 termination of a series established pursuant to subsection (a) of section  
2 2 of this act shall not affect the limitation on a liability of such  
3 series provided by subsection (b) of section 2 of this act. A series is  
4 terminated and its affairs shall be wound up upon the dissolution of the  
5 limited liability company under sections 21-147 to 21-154.

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

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

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

14 (3) If there is more than one class or group of members associated  
15 with the series, then by each class or group of members associated with  
16 the series, in either case, by members who own more than fifty percent of  
17 the transferable interests of the series owned by all of the members  
18 associated with the series or by the members of each class or group  
19 associated with the series.

20 (c) The persons winding up the affairs of a series, in the name of  
21 the series and for and on behalf of the series, may take all actions with  
22 respect to the series as are permitted under section 21-148 for a limited  
23 liability company. The persons winding up the affairs of a series shall  
24 provide for the claims and obligations of the series as provided in  
25 section 21-154 for a limited liability company and distribute the assets  
26 of the series as provided in section 21-154 for a limited liability  
27 company. An action taken pursuant to this subsection shall not affect the  
28 liability of a member and shall not impose liability on a liquidating  
29 trustee.

30 Sec. 7. A foreign limited liability company that is authorized to  
31 do business in this state under sections 21-155 to 21-163 which is

1 governed by an operating agreement that establishes or provides for the  
2 establishment of designated series of transferable interests having  
3 separate rights, powers, or duties with respect to specified property or  
4 obligations of the foreign limited liability company, or profits and  
5 losses associated with the specified property or obligations, shall  
6 indicate that fact on the application for a certificate of authority as a  
7 foreign limited liability company. In addition, the foreign limited  
8 liability company shall state on the application whether the debts,  
9 liabilities, and obligations incurred, contracted for, or otherwise  
10 existing with respect to a particular series, if any, are enforceable  
11 against the assets of such series only, and not against the assets of the  
12 foreign limited liability company generally.

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