

One Hundred Seventh Legislature - First Session - 2021

Introducer's Statement of Intent

LB253

Chairperson: Senator Matt Williams

Committee: Banking, Commerce and Insurance

Date of Hearing: February 02, 2021

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

LB253 would amend section 21-192 of the Nebraska Uniform Limited Liability Company Act (NULLCA) to correct two omissions in its fee schedule provisions regarding protected series limited liability companies (protected series LLCs) and would amend section 21-504 of the Nebraska Uniform Protected Series Act (NUPSA) to clarify that a protected series of a protected series LLC may not render professional services.

This bill was introduced at the request of the Secretary of State to address concerns identified in the process of implementing the NUPSA. Legislation enacting the NUPSA was passed in 2018 (LB1121) and 2019 (LB78) with an operative date of January 1, 2021. A series LLC is a type of limited liability company (LLC) that has one or more protected series. A protected series is distinct from the series LLC and any other protected series created by the series LLC and can sue in its own name.

LB253 contains three clarifying changes:

The bill would amend section 21-192 of the NULLCA to add a reference related to filing a statement of designation as well as a protected-series designation. A protected-series designation is a filing that may be filed by an LLC to establish a new protected series under section 21-509 of the NUPSA. A new protected series may also be established by filing a statement of designation as part of a merger under section 21-532 of the NUPSA. The existing filing fee provisions of section 21-192 do not reference a filing fee for filing a statement of designation when filed as part of a merger. The bill would amend subdivision (1)(b) of section 21-192 to provide that the filing fee for filing a statement of designation under section 21-532 is the same as the filing fee for filing a protected-series designation under section 21-509.

The bill would amend section 21-192 to add a reference related to filing a statement of designation change. A statement of designation change is a filing that may be filed to change the name of a company or the name of a protected series, or both. The filing is referenced in both sections 21-509 and 21-510 of the NUPSA. The existing filing fee provisions of 21-192 only reference the fee for filing the statement of designation change under section 21-510 and is silent on the fee for filing the same form under section 21-509. This was a drafting oversight. The bill would amend subsection (3) of section 21-192 to provide that the fee for filing a statement of designation under section 21-509 shall be the same as under section 21-510.

The bill would clarify that a protected series may not render a professional service. LLCs may render professional services by stating the professional service in their certificate of organization and by filing a certificate from their regulating board that identifies proper licensure by individuals rendering professional services. A protected series cannot state a profession in any filing with the Secretary of State as it does not file a certificate of organization. The NUPSA does not provide any specific procedures for a protected series to file the appropriate documentation from a regulating board regarding licensed individuals and it also does not address whether a protected series can render different services from those of the series LLC or other protected series created by the series LLC. To clarify that a protected series may not perform professional services, this bill would provide that a protected series may not render a professional service. This does not preclude a domestic or foreign series LLC from rendering a professional service but does preclude it for a protected series created by the series LLC.

The bill would provide an operative date of July 1, 2021 and carries an emergency clause.

As a matter of general background, the NUPSA provides a framework for the formation and operation of a protected series LLC. A protected series LLC 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 liability for the entity’s debts. A series LLC provides horizontal shields—protecting each protected series (and its assets) from liability for the debts of protected series LLC and from the debts of any other protected series of the protected series LLC. A horizontal shield likewise protects the series LLC (and its assets) from creditors of any protected series of the series LLC.

Principal Introducer: _____

Senator Matt Williams