

# UNIFORM PROTECTED SERIES ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR  
SAN DIEGO, CALIFORNIA  
JULY 14 - JULY 20, 2017

*WITH PREFATORY NOTE AND COMMENTS*

Copyright © 2017  
By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

November 14, 2017

## ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 126th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**UNIFORM PROTECTED SERIES ACT**

**TABLE OF CONTENTS**

PREFATORY NOTE..... 1

**[ARTICLE] 1**

**GENERAL PROVISIONS**

SECTION 101. SHORT TITLE..... 19  
SECTION 102. DEFINITIONS..... 19  
SECTION 103. NATURE OF PROTECTED SERIES..... 23  
SECTION 104. POWERS AND DURATION OF PROTECTED SERIES..... 23  
SECTION 105. GOVERNING LAW..... 25  
SECTION 106. RELATION OF OPERATING AGREEMENT, THIS [ACT], AND LIMITED  
LIABILITY COMPANY ACT..... 28  
SECTION 107. ADDITIONAL LIMITATIONS ON OPERATING AGREEMENT..... 32  
SECTION 108. RULES FOR APPLYING LIMITED LIABILITY COMPANY ACT TO  
SPECIFIED PROVISIONS OF [ACT]..... 38

**[ARTICLE] 2**

**ESTABLISHING PROTECTED SERIES**

SECTION 201. PROTECTED SERIES DESIGNATION; AMENDMENT..... 41  
SECTION 202. NAME..... 43  
SECTION 203. REGISTERED AGENT..... 44  
SECTION 204. SERVICE OF PROCESS, NOTICE, DEMAND, OR OTHER RECORD..... 46  
SECTION 205. CERTIFICATE OF GOOD STANDING FOR PROTECTED SERIES..... 48  
SECTION 206. INFORMATION REQUIRED IN [ANNUAL] [BIENNIAL] REPORT;  
EFFECT OF FAILURE TO PROVIDE..... 51

**[ARTICLE] 3**

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

SECTION 301. ASSOCIATED ASSET..... 52  
SECTION 302. ASSOCIATED MEMBER..... 56  
SECTION 303. PROTECTED-SERIES TRANSFERABLE INTEREST..... 57  
SECTION 304. MANAGEMENT..... 58  
SECTION 305. RIGHT OF PERSON NOT ASSOCIATED MEMBER OF PROTECTED  
SERIES TO INFORMATION CONCERNING PROTECTED SERIES..... 62

**[ARTICLE] 4**

**LIMITATION ON LIABILITY AND ENFORCEMENT OF CLAIMS**

SECTION 401. LIMITATIONS ON LIABILITY.....	63
SECTION 402. CLAIM SEEKING TO DISREGARD LIMITATION OF LIABILITY.....	66
SECTION 403. REMEDIES OF JUDGMENT CREDITOR OF ASSOCIATED MEMBER OR PROTECTED-SERIES TRANSFEREE.....	69
SECTION 404. ENFORCEMENT AGAINST NON-ASSOCIATED ASSET.....	69

**[ARTICLE] 5**

**DISSOLUTION AND WINDING UP OF PROTECTED SERIES**

SECTION 501. EVENTS CAUSING DISSOLUTION OF PROTECTED SERIES.....	74
SECTION 502. WINDING UP DISSOLVED PROTECTED SERIES.....	75
SECTION 503. EFFECT OF REINSTATEMENT OF SERIES LIMITED LIABILITY COMPANY OR REVOCATION OF VOLUNTARY DISSOLUTION.....	77

**[ARTICLE] 6**

**ENTITY TRANSACTIONS RESTRICTED**

SECTION 601. DEFINITIONS.....	78
SECTION 602. PROTECTED SERIES MAY NOT BE PARTY TO ENTITY TRANSACTION.....	79
SECTION 603. RESTRICTION ON ENTITY TRANSACTION INVOLVING PROTECTED SERIES.....	79
SECTION 604. MERGER AUTHORIZED; PARTIES RESTRICTED.....	80
SECTION 605. PLAN OF MERGER.....	81
SECTION 606. STATEMENT OF MERGER.....	83
SECTION 607. EFFECT OF MERGER.....	84
SECTION 608. APPLICATION OF SECTION 404 AFTER MERGER.....	87

**[ARTICLE] 7**

**FOREIGN PROTECTED SERIES**

SECTION 701. GOVERNING LAW.....	89
SECTION 702. NO ATTRIBUTION OF ACTIVITIES CONSTITUTING DOING BUSINESS OR FOR ESTABLISHING JURISDICTION.....	92
SECTION 703. REGISTRATION OF FOREIGN PROTECTED SERIES.....	93
SECTION 704. DISCLOSURE REQUIRED WHEN FOREIGN SERIES LIMITED LIABILITY COMPANY OR FOREIGN PROTECTED SERIES PARTY TO PROCEEDING.....	94

**[ARTICLE] 8**

**MISCELLANEOUS PROVISIONS**

SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. ....	96
SECTION 802. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. ....	96
[SECTION 803. TRANSITIONAL PROVISIONS.] .....	96
SECTION 804. SAVINGS CLAUSE.....	97
[SECTION 805. SEVERABILITY CLAUSE.] .....	98
SECTION 806. REPEALS; CONFORMING AMENDMENTS.....	98
SECTION 807. EFFECTIVE DATE.....	98

# UNIFORM PROTECTED SERIES ACT

## PREFATORY NOTE

### Contents

Part 1	The Protected Series Construct
Part 2	“Protected Series” as the Term of Art
Part 3	The Import of the Protected Series Construct
Part 4	Growing Popularity of Series Limited Liability Companies
Part 5	Structure of the Act – A Module to be Enacted as Part of an Enacting State’s Current Limited Liability Company Act
Part 6	Extrapolation – Leveraging by Analogy the Rules of an Enacting State’s Limited Liability Company Act A. The Need for and Meaning of “Extrapolation” B. An Additional Benefit – Parallelism in Concept and Terminology
Part 7	Non-Liability and Non-Recourse Rules and the Act’s Novel Approach to Horizontal Shields A. The Two-Fold Nature of a Liability Shield B. Horizontal Shields – Non-Liability and Non-Recourse Rules Distinguished to Create an Important Inducement to Good Recordkeeping C. The Novel and Important Inducement – “Asset by Asset Exposure”
Part 8	Overcoming the Shields
Part 9	Traditional and Internal Shields Compared in Tabular Form
Part 10	Clarity and Safeguards of this Act Compared to Current Protected Series Statutes

### Part 1. The Protected Series Construct

As provided by statutes in 13 states, the District of Columbia, and Puerto Rico,<sup>1</sup> the protected

---

<sup>1</sup> As of September 17, 2017, the following statutes provide for protected series within a limited liability company. ALA. CODE §§ 10A-5A-11.01-.16 (2015); DEL. CODE ANN. tit. 6, §18-215 (West 2015); D.C. CODE ANN. §29-802.06 (2015); 805 ILL. COMP. STAT. ANN. 180/37-40 (West 2014); IND. CODE ANN. § 23-18.1-1-1 to 23-18.1-1-7-4 (West); IOWA CODE ANN. §§ 489.1201-1206 (West 2014); KAN. STAT. ANN. § 17-76, 143 (West 2014); MO. REV. STAT. § 347.186. (2014); MONTANA CODE ANN. § 35-8-304 (West 2013); NEV. REV. STAT. ANN. § 86.296 (West 2014); OKLA. ST. ANN. tit. 18, §§ 2005(B), 2054.4 (West 2014); TENN. CODE ANN. § 48-249-309 (West 2014); TEX. BUS. ORGS. CODE ANN. §§101.601-622 (West 2013); UTAH CODE ANN. §§ 48-3a-1201 to 1209 (West 2014); P.R. LAWS ANN. tit. 14, § 3967 (2011).

series construct has the following aspects:<sup>2</sup>

- an identifiable set of assets segregated within a limited liability company (“a series limited liability company”);<sup>3</sup>
- the assets:
  - comprise a protected series, which is empowered to conduct activities in its own name;
  - must be identified by thorough recordkeeping that distinguishes them from assets of the series limited liability company and assets of any other protected series of the company;<sup>4</sup>
  - are obligated solely to persons asserting claims pertaining to activities related to the segregated assets; and
  - are not available to persons asserting claims arising from the activities of the series limited liability company or any other protected series of the company;
- one or more members of the series limited liability company may be associated with the protected series,<sup>5</sup> but not necessarily; and
- distributions arising from the assets and activities go to:
  - the members associated with the protected series, if any; or
  - if the series has no associated members, the series limited liability company.

Thus, a series limited liability company contains “internal shields” – *i.e.*, asset partitions reserving the assets of each protected series solely to creditors of that protected series. These “horizontal” shields are conceptually and practically quite different from the traditional, “vertical” shield that protects the owners of an organization from automatic, status-based liability for the organization’s obligations.

---

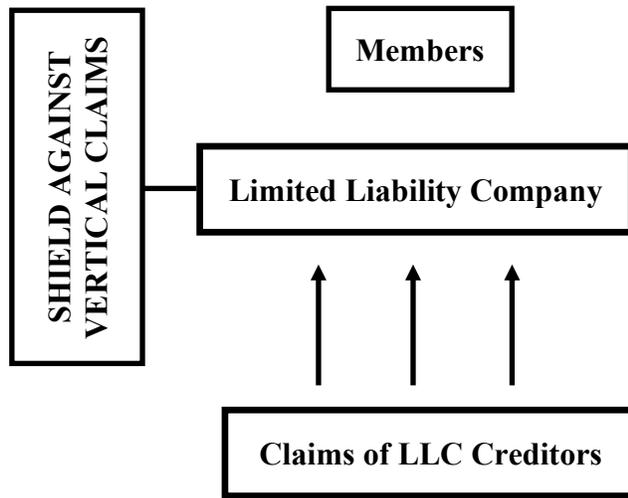
<sup>2</sup> Existing statutes refer to “series” rather than “protected series.” Part 2 of this Note explains why this act and its commentary use the latter label.

<sup>3</sup> Delaware law authorizes protected series within a limited partnership, Del. Code Ann. tit. 6, §17-218 (2015), but few Delaware limited partnerships provide for protected series. Statutory trusts also have series, but those series differ fundamentally from the protected series authorized by this act. For example, while “[a] series of a statutory trust is not an entity separate from the statutory trust,” Uniform Statutory Trust Entity Act (2009) (Last Amended 2013), Section 401(b), and “may not sue or be sued in its own name,” *Id.* Section 403(a), “[a] protected series has the capacity to sue and be sued in its own name,” Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 104(a), and “is a person distinct from ... the [limited liability] company [and any other]... protected series of the company.” *Id.* Section 103(1)-(2).

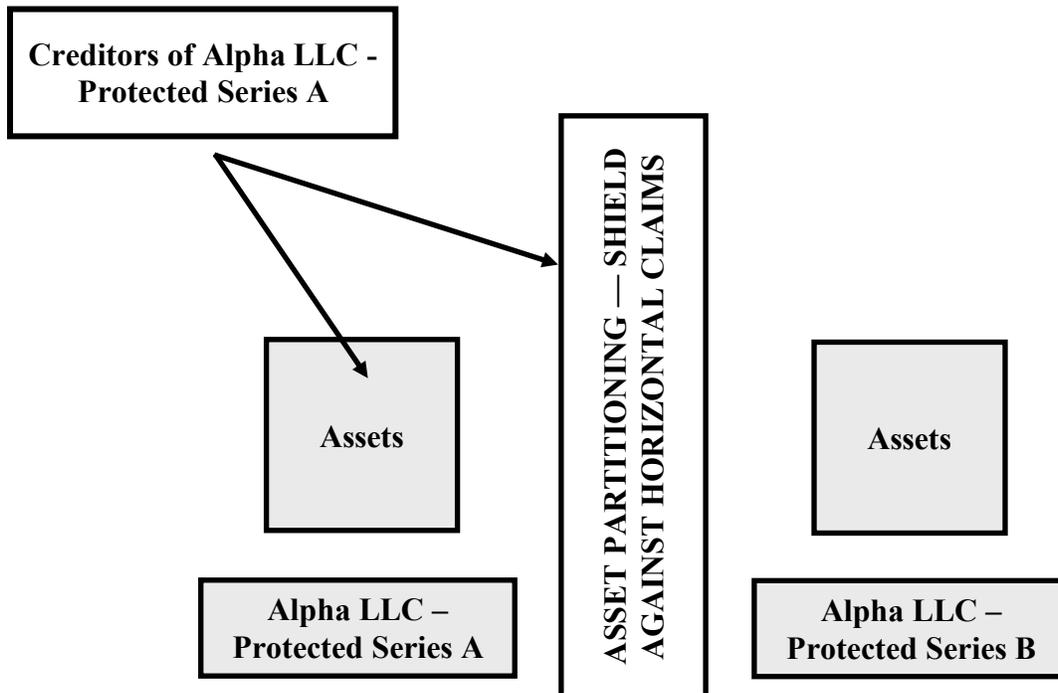
<sup>4</sup> The recordkeeping is not part of the public record, although some assets might be titled in the name of a protected series. *See* Section 301(e). The act contains an important and novel inducement to accurate recordkeeping. *See* Part 7-C of this Note.

<sup>5</sup> Allowing a non-member of a series limited liability company to be associated with a protected series of the company would cause daunting complexity while producing very little (if any) benefit. *See* Section 302(a), cmt.

**TRADITIONAL — “VERTICAL” — SHIELD**



**INTERNAL — “HORIZONTAL” — SHIELDS**



## Part 2. “Protected Series” as the Term of Art

Following long-standing practice with statutory trusts and investment companies, existing protected series statutes use “series” as the term of art for the construct just described. However, outside that context, “series” has an established and very different meaning with regard to bonds, corporate stock, etc. As a result, using “series” to label the new construct is quite confusing.<sup>6</sup> To avoid confusion, this act uses the term “protected series” – both to signal a different meaning and to call attention to the internal, horizontal shields which are the construct’s defining characteristic.

## Part 3. The Import of the Protected Series Construct

The protected series:

- pushes the conceptual envelope of entity law by providing for a quasi-distinct legal person existing *within* an overarching entity;
- establishes a new type of liability shield, the “internal” or “horizontal” shield. Rather than protecting the owners of an organization from status-based liability for the organization’s debts, obligations, and other liabilities (the “vertical shield”), the internal/horizontal shields:
  - protect the assets of one protected series from the creditors of the series limited liability company and the creditors of any other protected series of the company; and
  - provide comparable protection for the assets of the series limited liability company itself.

## Part 4. Growing Popularity of Series Limited Liability Companies

It is not possible to determine the number of series limited liability companies and protected series in existence in the United States, because under most protected series statutes a limited liability company can establish a protected series without making a corresponding public filing. The only item on the public record will be a statement that the company has the capacity to establish protected series. However, anecdotal evidence suggests heavy usage, especially under the Delaware statute.<sup>7</sup>

Better data is available from Illinois, where the law requires a public filing to establish a

---

<sup>6</sup> For example, lists of limited liability company acts with “series” provisions have often included the statutes of Minnesota, North Dakota, and Wisconsin. Although these acts did (in the case of Minnesota and North Dakota) and do (in the case of Wisconsin) refer to “series,” the word has nothing to do with asset partitioning and internal shields. The three acts have used “series” to describe a category of ownership interest analogous to a series of stock. See Minn. Stat. § 322B.03, subd. 44, repealed 2014 Minn. Laws ch. 157, art. 1; ND Stat. § 10-32.1-02(48), repealed 2015 North Dakota Laws Ch. 87; Wis. Stat. § 183.0504 (2017).

<sup>7</sup> An ABA Advisor to the Drafting Committee reports having established approximately 1500 series limited liability companies under Delaware law.

protected series. As of January 1, 2017, more than 27,000 protected series were active under Illinois law.

The growing popularity is also reflected in the following chart,<sup>8</sup> which shows the increasing number of U.S. jurisdictions that provide for the creation of protected series:

<b>year of enactment</b>	<b>name of enacting jurisdictions</b>	<b>total number of enactments in the year</b>	<b>cumulative total of jurisdictions with protected series provisions</b>
1996	Delaware	1	1
2004	Oklahoma	1	2
2005	Illinois, Nevada, Tennessee	3	5
2008	Iowa	1	6
2009	Puerto Rico, Texas	2	8
2011	District of Columbia	1	9
2012	Kansas	1	10
2013	Missouri, Montana, Utah	3	13
2014	Alabama	1	14
2016	Indiana	1	15

Several other jurisdictions are reported as very interested in providing for protected series and as awaiting the conclusion of this project. In 2017, protected series proponents in two states contemplated enacting a non-final version of the uniform act – i.e., before the Drafting Committee had finished its work and the Uniform Law Commission had given final approval to the act. Eventually, in both states, the proponents decided to wait for the 2018 legislative session.

Although the widespread use and growing popularity of the protected series construct are undeniable, the causes are not well understood. For the most part, the legal and business relationships established through protected series can also be established with various structures involving several limited liability companies.

Some situations have been identified in which protected series provide a unique benefit, but these situations involve very specialized types of arrangements and cannot account for widespread use and popularity. Some proponents note a potential convenience in some regulatory environments: With the approval of the relevant regulator, a series limited liability company makes one regulatory filing or holds a single license, and various protected series of the company function under the aegis of that filing or license.

Another explanation is that the series limited liability company provides the first ever off-the-

---

<sup>8</sup> Compiled by legislative counsel to the Uniform Law Commission.

shelf template for establishing a structure of affiliated businesses. It is debatable whether such a template increases economic efficiency, provides traps for the unwary, or both. What is not in doubt is that the protected series construct is now an established part of U.S. business law. Also not in doubt is that current statutes leave many very practical questions unanswered and lack important safeguards to protect the public in general and creditors in particular.

Part 5. Structure of the Act – A Module to be Enacted  
as Part of an Enacting State’s Current Limited Liability Company Act

A protected series is inevitably connected with a limited liability company.<sup>9</sup> Accordingly, existing provisions for protected series are inserts into a jurisdiction’s existing limited liability company act. This act takes the same approach and is designed to work with any existing limited liability company act.

Part 6. Extrapolation – Leveraging by Analogy  
the Rules of an Enacting State’s Limited Liability Company Act

A. The Need for and Meaning of “Extrapolation”

A protected series is a business organization,<sup>10</sup> analogous in almost all respects to a limited liability company. All limited liability company acts provide rules governing a limited liability company’s existence, including:

- non-variable provisions delineating the relationship of a company and its members with third parties;
- non-variable provisions pertaining to internal affairs (i.e., matters *inter se* the company, its members, agents, and transferees of its members); and
- variable provisions (“default rules”) that govern issues of internal affairs unless the operating agreement provides otherwise.<sup>11</sup>

A statute providing for protected series needs the same three sets of rules at the “protected series level.” This act meets that need in four ways, by:

---

<sup>9</sup> See Section 104(c) (stating that “[a] protected series of a series limited liability company ceases to exist not later than when the company completes its winding up”).

<sup>10</sup> This act provides that “a protected series of a series limited liability company has the same powers and purposes as the company,” Section 104(b), and many limited liability company acts permit a limited liability company to have, in the words of the uniform act, “any lawful purpose, regardless of whether for profit.” Uniform Limited Liability Company Act (2006) (Last Amended 2013), Section 108(b). To date, however, using a series limited liability company for non-business purposes is rare, if extant at all.

<sup>11</sup> See, e.g., Uniform Limited Liability Company Act (2006) (Last Amended 2013), Sections 105(b) (pertaining to default rules for inter se matters) and 503 (delineating the rights of a creditor of a member or transferee). A protected series does not have its own operating agreement. Rather, the operating agreement of a series limited liability company governs the internal affairs of a protected series of the company. See Section 106, cmt.

- stating the rule directly and in a self-contained way,
  - e.g., Section 301 (stating requirements for associating an asset with a protected series or series limited liability company);
- expressly applying a rule from the limited liability company act of an enacting state,
  - e.g., Section 403 (applying the charging order provision of the enacting state’s limited liability company act to judgment creditors of associated members and protected-series transferees);
- stating the rule in part directly and in part by analogizing to the rule applicable at the “limited liability company level” – i.e., to a limited liability company under an enacting state’s limited liability company act;
  - e.g., Section 106(d) (providing that, if the operating agreement of a series limited liability company does not address a matter involving internal affairs, then the act governs to the extent applicable, and otherwise the default rules of the limited liability company act apply by analogy); and
- stating the rule solely by analogy to the rule applicable at the series limited liability company level,
  - e.g., Sections 106(b) (providing that if the limited liability company act “restricts the power of an operating agreement, the restriction applies” by analogy “to a matter” at the protected series level); 501(4)(B) (providing for dissolution of a protected series by judicial order “on application by an associated member or protected-series manager of the protected series ....to the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member of or a person managing the company”).

This Note and the act’s official comments label the analogy approach as “extrapolation,”<sup>12</sup> and the mechanics of extrapolation are straightforward. Extrapolation occurs only when expressly invoked by some provision of this act and, when invoked, proceeds according to the following paradigm:

- a protected series is treated *as if it were* a separate limited liability company;
- any associated member of the protected series is treated *as if it were* a member of the separate, hypothetical company;
- any protected-series transferee of the protected series is treated *as if it were* a transferee of the separate, hypothetical company;
- any protected-series transferable interest of the protected series is treated *as if it were* a transferable interest of the separate, hypothetical company;
- a series manager of the protected series is treated *as if it were* a manager of the

---

<sup>12</sup> Merriam Webster defines “extrapolate” in relevant part to mean “to infer (values of a variable in an unobserved interval) [i.e., issues at the protected series level] from values within an already observed interval [i.e., default rules at the limited liability company level”], <http://www.merriam-webster.com/dictionary/extrapolate>, last visited 5/17/16.

- separate, hypothetical company;
- any asset of the protected series is treated *as if it were* an asset of the separate, hypothetical company, whether or not the asset is an associated asset of the protected series; and
- any creditor or other obligee of the protected series is treated *as if it were* a creditor or obligee of the separate, hypothetical company.

Extrapolation provides two significant advantages. First, the approach avoids burdening this act with lengthy provisions largely duplicative of provisions in the relevant limited liability company act. Second, where appropriate the approach imports to the protected series level the same policy choices reflected at the limited liability company level.

### B. An Additional Benefit – Parallelism in Concept and Terminology

Extrapolation has an additional benefit. The approach makes possible parallelism in concept and terminology.

<b>concept</b>	<b>defined term pertaining to series limited liability company</b>	<b>defined term pertaining to a protected series</b>
person with both governance and economic rights	member	associated member
economic rights	transferable interest (rights to distributions from the series limited liability company)	protected-series transferable interest (rights to distributions from a protected series)
owner of solely economic rights	transferee	protected-series transferee <sup>13</sup>
owned assets	property of the series limited liability company	assets of a protected series
		associated asset/ non-associated asset of a protected series <sup>14</sup>

## Part 7. Non-Liability and Non-Recourse Rules and the Act’s Novel Approach to Horizontal Shields

### A. The Two-Fold Nature of a Liability Shield

An entity’s traditional liability shield – i.e., the vertical shield – protects an entity’s owners from

<sup>13</sup> Although a series limited liability company may own a protected-series transferable interest of a protected series of the company, the defined term, “protected-series transferee,” does not include the company. *See* Section 303(d), cmt.

<sup>14</sup> A protected series can own an asset without the asset being associated with the protected series. This act labels this category of property as a “non-associated asset.” Only an associated asset is protected by the internal shields of a protected series. *See* Sections 301 and 404.

automatic, status-based liability for the entity’s debts and thereby protects each owner’s personal assets from creditors of the entity. Thus, the shield has two parts: a non-liability rule (no status-based liability) and a non-recourse rule (no creditor recourse against assets). This distinction is immaterial in the context of a vertical shield but is essential to understanding this act’s novel approach to horizontal shields.

B. Horizontal Shields – Non-Liability and Non-Recourse Rules Distinguished  
to Create an Important Inducement to Good Recordkeeping

Like the traditional “vertical shield,” a protected series’ horizontal shield contains both a non-liability rule and a non-recourse rule. This act treats these rules separately to create an important inducement to good recordkeeping.

- under the non-liability rule (Section 401(b)):
  - a protected series is not liable for the debts of the series limited liability company or any other protected series of the company and *vice versa*.
  
- under the non-recourse rule (Sections 301 and 404):
  - only an *associated* asset of a protected series is shielded against collection efforts of judgment creditors of the series limited liability company or of any other protected series of the company, and the same is true for assets of the company; and
  - *association* is accomplished by creating and maintaining required records.<sup>15</sup>

C. The Novel and Important Inducement – “Asset by Asset Exposure”  
under Sections 404 and 301

Thus, even when the non-liability rule is firmly in place for a protected series,<sup>16</sup> the non-recourse rule for each asset of the protected series is subject to challenge on the grounds that: (i) the relevant records are deficient; (ii) the asset is therefore non-associated; and (iii) as a result the asset is “up for grabs” not only by a creditor of the protected series but also by any judgment creditor of the series limited liability company and any judgment creditor of any other protected series of the company.<sup>17</sup>

EXAMPLE: Conference, LLC, a series limited liability company, has two protected series, Conference, LLC – Protected Series Alpha (“Alpha”) and Conference, LLC – Protected Series Beta (“Beta”). Beta has several valuable assets, each of which has been properly documented and thereby associated with Beta (Section 301) since first acquired by Beta. A judgment creditor of Alpha attempts to levy on an associated asset of Beta. The attempt will fail for two reasons: (i) the attempt is an effort to hold Beta liable for Alpha’s debts, which

---

<sup>15</sup> See Section 301(b)-(c).

<sup>16</sup> Like the non-liability rule of a vertical shield, the non-liability rule of a horizontal shield is subject to “piercing” claims. See Section 402.

<sup>17</sup> The situation is the same for assets of the series limited liability company itself.

contravenes the non-liability rule; and (ii) the non-recourse rule protects Beta's associated assets from claims except for claims asserted by Beta's creditors.

EXAMPLE: Same facts, except that, when Alpha's judgment creditor attempts to levy on Beta's property, one of Beta's assets is a "non-associated asset." Although Beta is not liable on the judgment against Alpha and the asset remains Beta's property, under Section 404 the asset is nonetheless subject to levy by the judgment creditor of Alpha.<sup>18</sup>

This asset-by-asset exposure does not exist under any current protected series statutes, because no current statute treats the non-liability and non-recourse rules separately with regard to horizontal shields. Moreover, no current statute contemplates situations in which recordkeeping is inadequate as to some assets and not others. Thus, this act's inducement to good recordkeeping is unique.

### Part 8. Overcoming the Shields

"Piercing the veil" is the foremost doctrine for overcoming the traditional, vertical shield separating an entity from its owners. When a creditor succeeds with a piercing claim, the shield falls *in toto*. That is, all the owner's non-exempt assets are available to the judgment creditor of the entity.

The piercing doctrine (and any related theories that conflate an organization and its owners) apply to the vertical shield between a series limited liability company and its members and to the vertical shield between a protected series and its associated members. Likewise, the piercing doctrine (and related theories of affiliate liability) will apply to the internal, horizontal shields – *i.e.*, in the proper circumstances, a court will disregard the internal shields, negate the non-liability rule, and thus render the non-recourse rule moot. For a detailed discussion of this issue, see Section 402, cmt.

---

<sup>18</sup> If a judgment creditor of Alpha or the series limited liability company successfully levies on the asset, Beta may have an unjust enrichment claim against the judgment debtor and a damage action against the person responsible for the recordkeeping that, being deficient, caused the item to be non-associated.

Part 9. Traditional and Internal Shields Compared in Tabular Form

<b>type of shield</b>	<b>what the shield separates</b>	<b>non-liability rule</b>	<b>non-recourse rule</b>	<b>rules for overcoming the shield</b>
<b>traditional, vertical corporate/LLC liability shield</b>	an entity from its owners	stated expressly	unstated, but ineluctably implied	piercing – shield overcome <i>in toto</i>
<b>internal, horizontal shields in a series limited liability company</b>	one set of assets/operations from other sets of assets/operations	stated expressly	stated expressly but applicable only as to associated assets	piercing – shield overcome <i>in toto</i>  “asset by asset” exposure under Section 404

Part 10. Clarity and Safeguards of this Act Compared  
to Current Protected Series Statutes

In comparison with existing statutes, this act provides far greater transparency to the public and far greater clarity as to the myriad legal questions raised by the protected series concept. The following chart identifies 21 key issues and compares this act with the seminal Delaware provision on protected series and with the protected series provisions of Illinois and Texas, the two most clearly developed statutes from across the non-uniform spectrum of current law.<sup>19</sup>

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Is a separate public filing necessary to establish each protected series?	Yes; § 201(b)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(d)	No
Is protected series defined as a legal person?	Yes; §§ 102(7), 103	Yes; DEL. CODE ANN. tit. 6, § 18-101(12)	No	No
Is the duration of protected series expressly limited to the duration of series limited liability company?	Yes; § 104(b)(1)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(m)	Yes; TEX. BUS. ORGS. CODE § 101.616(1)
Must name of protected series include name of series limited liability company?	Yes; § 202(b)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(c)	No

---

<sup>19</sup> Analysis current as of November 6, 2017, provided by legislative counsel to the Uniform Law Commission.

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute specify rules for disregarding the internal shields that protect the assets of one protected series from the creditors of another, other than a general recordkeeping requirement?	Yes; § 402	No	No	No
Are there “asset by asset” consequences for assets not properly associated with a protected series, even if the internal shields remain in place?	Yes; § 404	No	No	No
Does the statute make it ineffective to associate property after a claim against the property has been made?	Yes; § 404	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Do special recordkeeping requirements apply to transfers between a series limited liability company and a protected series of the company and between protected series of the company?	Yes; § 301(b)(3) and (c)(3)	No	No	No
If the statute expressly permits associated assets to be held by a nominee, etc., does the statute limit permission in any way?	Yes; § 301(e)	No; DEL. CODE ANN. tit. 6, § 18-215(b)	No; 805 ILL. COMP. STAT. 180/37-40(b)	No; TEX. BUS. ORGS. CODE § 101.603(a)
Does the statute address specifically the rights of judgment creditors of associated members?	Yes; 403	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute expressly and directly require membership in the limited liability company as prerequisite to being associated member of protected series?	Yes; § 302(a)	No	No	No
Does the statute address how provisions in the limited liability company act apply at the protected series level?	Yes; §§ 106(d), 108, 304(c) and (f), 501(4)(A), 502(a), and 503(2)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(j)	Yes; TEX. BUS. ORGS. CODE §§ 101.609, 101.617
Does the statute address whether associated members of a protected series have veto rights to operating agreement amendments affecting the protected series?	Yes; § 304(e)	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute contain rules for protected series that the operating agreement cannot vary?	Yes; § 107	No	No	Yes, but limitation applies only to requirements for maintaining internal shields; TEX. BUS. ORGS. CODE § 101.054(a)(2) (referring to TEX. BUS. ORGS. CODE § 101.602(b))
Does the statute provide for registering foreign protected series to do business in the state?	Yes; § 604	No	Yes; 805 ILL. COMP. STAT. 180/37-40(o)	No
Does the statute require foreign protected series doing business in the state to comply with same name requirements as domestic protected series?	Yes; § 604(c)	No	Yes; 805 ILL. COMP. STAT. 180/37-40(c)	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute require a foreign protected series to disclose either (i) information regarding the foreign series limited liability company and other foreign protected series of the company comparable to the information available from the public record regarding a domestic protected series or (ii) the identity of an individual who has this information?	Yes; §§ 704, 703(b)(2)	No	No	No
Does the statute permit a court to apply to a foreign protected series an enacting state's law regarding liability shields? in	Yes; §§ 404(c), 404(e)	No	No	No

<b>Provisions Protecting Creditors or Providing Certainty</b>	<b>UPSA</b>	<b>Delaware</b>	<b>Illinois</b>	<b>Texas</b>
Does the statute expressly address whether the series limited liability company may own an interest in a protected series of the company?	Yes; § 303(a)	No	No	No