WEST VIRGINIA CODE CHAPTER 31b ARTICLE 14

WV Legislature

§31B-14-101. Short title.

This act may be cited as the Uniform Protected Series Act.

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§31B-14-102. Definitions.

In this chapter:

"Asset" means property in which a series limited liability company or protected series has rights; or as to which the company or protected series has the power to transfer rights.

"Associated asset" means an asset that meets the requirements of §31B-14-301 of this code.

"Associated member" means a member that meets the requirements of §31B-14-302.

"Foreign protected series" means an arrangement, configuration, or other structure established by a foreign limited liability company which has attributes comparable to a protected series established under this chapter. The term applies whether or not the law under which the foreign company is organized refers to "protected series".

"Foreign series limited liability company" means a foreign limited liability company that has at least one foreign protected series.

"Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of an entity.

"Non-associated asset" means:

An asset of a series limited liability company which is not an associated asset of the company; or an asset of a protected series of the company which is not an associated asset of the protected series.

"Person" includes a protected series.

"Protected series", except in the phrase "foreign protected series", means a protected series established under §31B-14-201.

"Protected-series manager" means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement and this chapter.

"Protected-series distributional interest" means a right to receive a distribution from a protected series.

"Protected-series transferee" means a person to which all or part of a protected-series distributional interest of a protected series of a series limited liability company has been transferred, other than the company. The term includes a person that owns a protected-series distributional interest as a result of ceasing to be an associated member of a protected series.

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"Series limited liability company" or “company”, except in the phrase "foreign series limited liability company", means a limited liability company that has at least one protected series.

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§31B-14-103. Nature of protected series.

A protected series of a series limited liability company is a person distinct from:

(1) The company, subject to §31B-14-104(c), §31B-14-501(1), and §31B-14-502(d);

(2) Another protected series of the company;

(3) A member of the company, whether or not the member is an associated member of the protected series;

(4) A protected-series transferee of a protected series of the company; and

(5) A transferee of a distributional interest of the company.

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§31B-14-104. Powers and duration of protected series.

(a) A protected series of a series limited liability company has the capacity to sue and be sued in its own name.

(b) Except as otherwise provided in subsections (c) and (d) of this section, a protected series of a series limited liability company has the same powers and purposes as the company.

(c) A protected series of a series limited liability company ceases to exist not later than when the company completes its winding up.

(d) A protected series of a series limited liability company may not:

(1) Be a member of the company;

(2) Establish a protected series; or

(3) Except as permitted by law of this state other than this chapter, have a purpose or power that the law of this state other than this chapter prohibits a limited liability company from doing or having.

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§31B-14-105. Governing law.

The law of this state governs:

(1) The internal affairs of a protected series of a series limited liability company, including:

(A) Relations among any associated members of the protected series;

(B) Relations among the protected series and:

(i) Any associated member;

(ii) The protected-series manager; or

(iii) Any protected-series transferee;

(C) Relations between any associated member and:

(i) The protected-series manager; or

(ii) Any protected-series transferee;

(D) The rights and duties of a protected-series manager;

(E) Governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) The relations between a protected series of a series limited liability company and each of the following:

(A) The company;

(B) Another protected series of the company;

(C) A member of the company which is not an associated member of the protected series;

(D) A protected-series manager that is not a protected-series manager of the protected series; and

(E) A protected-series transferee that is not a protected-series transferee of the protected series;

(3) The liability of a person for a debt, obligation, or other liability of a protected series of a series limited liability company if the debt, obligation, or liability is asserted solely by reason

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of the person being or acting as:

(A) An associated member, protected-series transferee, or protected-series manager of the protected series;

(B) A member of the company which is not an associated member of the protected series;

(C) A protected-series manager that is not a protected-series manager of the protected series;

(D) A protected-series transferee that is not a protected-series transferee of the protected series;

(E) A manager of the company; or

(F) A transferee of a distributional interest of the company;

(4) The liability of a series limited liability company for a debt, obligation, or other liability of a protected series of the company if the debt, obligation, or liability is asserted solely by reason of the company:

(A) Having delivered to the Secretary of State for filing under §31B-14-201(b) a protected series designation pertaining to the protected series or under §31B-14-201(d) or §31B-14-202(c) a statement of designation change pertaining to the protected series;

(B) Being or acting as a protected-series manager of the protected series;

(C) Having the protected series be or act as a manager of the company; or

(D) Owning a protected-series distributional interest of the protected series; and

(5) The liability of a protected series of a series limited liability company for a debt, obligation, or other liability of the company or of another protected series of the company if the debt, obligation, or liability is asserted solely by reason of:

(A) The protected series:

(i) Being a protected series of the company or having as a protected-series manager the company or another protected series of the company; or

(ii) Being or acting as a protected-series manager of another protected series of the company or a manager of the company; or

(B) The company owning a protected-series distributional interest of the protected series.

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§31B-14-106. Effect of operating agreement.

(a) Except as otherwise provided in this section and subject to §31B-14-107 and §31B-14-108, the operating agreement of a series limited liability company governs:

(1) The internal affairs of a protected series, including:

(A) Relations among any associated members of the protected series;

(B) Relations among the protected series and:

(i) Any associated member;

(ii) The protected-series manager; or

(iii) Any protected-series transferee;

(C) Relations between any associated member and:

(i) The protected-series manager: or

(ii) Any protected-series transferee;

(D) The rights and duties of a protected-series manager;

(E) Governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) Relations among the protected series, the company, and any other protected series of the company;

(3) Relations between:

(A) The protected series, its protected-series manager, any associated member of the protected series, or any protected-series transferee of the protected series; and

(B) A person in the person's capacity as:

(i) A member of the company which is not an associated member of the protected series;

(ii) A protected-series transferee or protected-series manager of another protected series; or

(iii) A transferee of the company.

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(b) If chapter 31B of this code restricts the power of an operating agreement to affect a matter, the restriction applies to a matter under §31B-14-108.

(c) If law of this state other than this article imposes a prohibition, limitation, requirement, condition, obligation, liability, or other restriction on a limited liability company, a member, manager, or other agent of the company, or a transferee of the company, except as otherwise provided in law of this state other than this article, the restriction applies in accordance with §31B-14-108.

(d) Except as otherwise provided in §31B-14-107, if the operating agreement of a series limited liability company does not provide for a matter described in subsection (a) of this section in a manner permitted by this article, the matter is determined in accordance with the following rules:

(1) To the extent this article addresses the matter, this article governs.

(2) To the extent this article does not address the matter, chapter 31B of this code governs the matter in accordance with §31B-14-108.

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§31B-14-107. Additional limitations on operating agreement.

An operating agreement may not vary the effect of:

(1) §31B-14-107;

(2) §31B-14-103;

(3) §31B-14-104(a);

(4) §31B-14-104(b) to provide a protected series a power beyond the powers chapter 31B of this code provides a limited liability company;

(5) §31B-14-104(c) or (d);

(6) §31B-14-105;

(7) §31B-14-106;

(8) §31B-14-108;

(9) §31B-14-201, except to vary the manner in which a limited liability company approves establishing a protected series;

(10) §31B-14-202;

(11) §31B-14-203;

(12) §31B-14-302;

(13) §31B-14-303(a) or (b);

(14) §31B-14-304(c), (f), or (g);

(15) §31B-14-401, except to decrease or eliminate a limitation of liability stated in §31B-14-401;

(16) §31B-14-402;

(17) §31B-14-403;

(18) §31B-14-404;

(19) §31B-14-501(1), (4), and (5);

(20) §31B-14-502, except to designate a different person to manage winding up;

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(21) §31B-14-503;

(22) §31B-14-601 *et seq.*;

(23) §31B-14-701 *et seq.*;

(A) The manner in which a series limited liability company may elect under §31B-14-803(a)(2) to be subject to this article; or

(B) The person that has the right to sign and deliver to the Secretary of State for filing a record under §31B-14-803(b)(2); or

(25) A provision of this article pertaining to:

(A) Registered agents; or

(B) The Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under this article.

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§31B-14-108. Rules for applying limited liability company act.

(a) Except as otherwise provided in subsection (b) of this section and §31B-14-107, the following rules apply in applying §31B-14-106, §31B-14-304(c) and (f), §31B-14-501(4)(A), §31B-14-502(a), and §31B-14-503(2):

(1) A protected series of a series limited liability company is deemed to be a limited liability company that is formed separately from the series limited liability company and is distinct from the series limited liability company and any other protected series of the series limited liability company.

(2) An associated member of the protected series is deemed to be a member of the company deemed to exist under §31B-14-108(a)(1) of this code.

(3) A protected-series transferee of the protected series is deemed to be a transferee of the company deemed to exist under §31B-14-108(a)(1) of this code.

(4) A protected-series distributional interest of the protected series is deemed to be a distributional interest of the company deemed to exist under §31B-14-108(a)(1) of this code.

(5) A protected-series manager is deemed to be a manager of the company deemed to exist under §31B-14-108(a)(1).

(6) An asset of the protected series is deemed to be an asset of the company deemed to exist under §31B-14-108(a)(1) of this code, whether or not the asset is an associated asset of the protected series.

(7) Any creditor or other obligee of the protected series is deemed to be a creditor or obligee of the company deemed to exist under §31B-14-108(a)(1) of this code.

(b) Subsection (a) of this section does not apply if its application would:

(1) Contravene §31B-1-103 of this code; or

(2) Authorize or require the Secretary of State to:

(A) Accept for filing a type of record that neither this article nor chapter 31B of this code authorizes or requires a person to deliver to the Secretary of State for filing; or

(B) Make or deliver a record that neither this article nor chapter 31B of this code authorizes or requires the Secretary of State to make or deliver.

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§31B-14-201. Protected series designation; amendment.

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish a protected series, a limited liability company shall deliver to the Secretary of State for filing a protected series designation, signed by the company, stating the name of the company and the name of the protected series to be established.

(c) A protected series is established when the protected series designation takes effect under §31B-2-206 of this code.

(d) To amend a protected series designation, a series limited liability company shall deliver to the Secretary of State for filing a statement of designation change, signed by the company, that changes the name of the company, the name of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under §31B-2-206 of this code.

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§31B-14-202. Name.

(a) Except as otherwise provided in subsection (b) of this section, the name of a protected series must comply with §31B-1-105 of this code.

(b) The name of a protected series of a series limited liability company must:

(1) Begin with the name of the company, including any word or abbreviation required by §31B-1-105(a) of this code; and

(2) Contain the phrase "Protected Series" or "protected series" or the abbreviation "P.S." or "PS".

(c) If a series limited liability company changes its name, the company shall deliver to the Secretary of State for filing a statement of designation change for each of the company's protected series, changing the name of each protected series to comply with §31B-14-202 of this code.

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§31B-14-203. Registered agent.

(a) The registered agent in this state for a series limited liability company is the registered agent in this state for each protected series of the company.

(b) Before delivering a protected series designation to the Secretary of State for filing, a limited liability company shall agree with a registered agent that the agent will serve as the registered agent in this state for both the company and the protected series.

(c) A person that signs a protected series designation delivered to the Secretary of State for filing affirms as a fact that the limited liability company on whose behalf the designation is delivered has complied with subsection (b) of this section.

(d) A person that ceases to be the registered agent for a series limited liability company ceases to be the registered agent for each protected series of the company.

(e) A person that ceases to be the registered agent for a protected series of a series limited liability company, other than as a result of the termination of the protected series, ceases to be the registered agent of the company and any other protected series of the company.

(f) Except as otherwise agreed by a series limited liability company and its registered agent, the agent is not obligated to distinguish between a process, notice, demand, or other record concerning the company and a process, notice, demand, or other record concerning a protected series of the company.

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§31B-14-204. Service of process, notice, demand, or other record.

(a) A protected series of a series limited liability company may be served with a process, notice, demand, or other record required or permitted by law by:

(1) Serving the company;

(2) Serving the registered agent of the protected series; or

(3) Other means authorized by law of this state other than chapter 31B of this code of this code.

(b) Service of a summons and complaint on a series limited liability company is notice to each protected series of the company of service of the summons and complaint and the contents of the complaint.

(c) Service of a summons and complaint on a protected series of a series limited liability company is notice to the company and any other protected series of the company of service of the summons and complaint and the contents of the complaint.

(d) Service of a summons and complaint on a foreign series limited liability company is notice to each foreign protected series of the foreign company of service of the summons and complaint and the contents of the complaint.

(e) Service of a summons and complaint on a foreign protected series of a foreign series limited liability company is notice to the foreign company and any other foreign protected series of the company of service of the summons and complaint and the contents of the complaint.

(f) Notice to a person under subsection (b), (c), (d), or (e) of this section is effective whether or not the summons and complaint identify the person if the summons and complaint name as a party and identify:

(1) The series limited liability company or a protected series of the company; or

(2) The foreign series limited liability company or a foreign protected series of the foreign company.

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§31B-14-205. Certificate of good standing for protected series.

(a) On request of any person, the Secretary of State shall issue a certificate of good standing for a protected series of a series limited liability company or a certificate of registration for a foreign protected series if:

(1) In the case of a protected series:

(A) No statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) The company has delivered to the Secretary of State for filing the most recent annual report required by §31B-2-211 of this code and the report includes the name of the protected series, unless:

(i) When the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) After the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) In the case of a foreign protected series, it is registered to do business in this state.

(b) A certificate issued under subsection (a) of this section must state:

(1) In the case of a protected series:

(A) The name of the protected series of the series limited liability company and the name of the company;

(B) That the requirements of subsection (a) of this section are met;

(C) The date the protected series designation pertaining to the protected series took effect; and

(D) If a statement of designation change pertaining to the protected series has been filed, the effective date and contents of the statement;

(2) In the case of a foreign protected series, that it is registered to do business in this state;

(3) That the fees, taxes, interest, and penalties owed to this state by the protected series or foreign protected series and collected through the Secretary of State have been paid, if:

(A) Payment is reflected in the records of the Secretary of State; and

(B) Nonpayment affects the good standing of the protected series; and

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(4) Other facts reflected in the records of the Secretary of State pertaining to the protected series or foreign protected series which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated by the Secretary of State in a certificate issued under subsection (a) of this section, the certificate may be relied on as conclusive evidence of the facts stated in the certificate.

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§31B-14-206. Information required in annual report; effect of failure to provide.

(a) In the annual report required by §31B-2-211 of this code, a series limited liability company shall include the name of each protected series of the company:

(1) For which the company has previously delivered to the Secretary of State for filing a protected series designation; and

(2) Which has not dissolved and completed winding up.

(b) A failure by a series limited liability company to comply with subsection (a) of this section with regard to a protected series prevents issuance of a certificate of good standing pertaining to the protected series but does not otherwise affect the protected series.

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§31B-14-301. Associated asset.

(a) Only an asset of a protected series may be an associated asset of the protected series. Only an asset of a series limited liability company may be an associated asset of the company.

(b) An asset of a protected series of a series limited liability company is an associated asset of the protected series only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) Identify the asset and distinguish it from any other asset of the protected series, any asset of the company, and any asset of any other protected series of the company;

(2) Determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

(3) If the protected series acquired the asset from the company or another protected series of the company, determine any consideration paid, the payor, and the payee.

(c) An asset of a series limited liability company is an associated asset of the company only if the company creates and maintains records that state the name of the company and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) Identify the asset and distinguish it from any other asset of the company and any asset of any protected series of the company;

(2) Determine when and from what person the company acquired the asset or how the asset otherwise became an asset of the company; and

(3) If the company acquired the asset from a protected series of the company, determine any consideration paid, the payor, and the payee.

(d) The records and recordkeeping required by subsections (b) and (c) of this section may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

(e) To the extent permitted by this section and law of this state other than this article, a series limited liability company or protected series of the company may hold an associated asset directly or indirectly, through a representative, nominee, or similar arrangement, except that:

(1) A protected series may not hold an associated asset in the name of the company or another protected series of the company; and

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(2) The company may not hold an associated asset in the name of a protected series of the company.

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§31B-14-302. Associated member.

(a) Only a member of a series limited liability company may be an associated member of a protected series of the company.

(b) A member of a series limited liability company becomes an associated member of a protected series of the company if the operating agreement or a procedure established by the agreement states:

(1) That the member is an associated member of the protected series;

(2) The date on which the member became an associated member; and

(3) Any protected-series distributional interest the associated member has in connection with becoming or being an associated member.

(c) If a person that is an associated member of a protected series of a series limited liability company is dissociated from the company, the person ceases to be an associated member of the protected series.

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§31B-14-303. Protected-series distributional interest.

(a) A protected-series distributional interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the company.

(b) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series distributional interests in the protected series.

(c) In addition to acquiring a protected series transferable series interest under subsection (b) of this section, a series limited liability company may acquire a protected-series distributional interest through a transfer from another person or as provided in the operating agreement.

(d) Except for §31B-14-108(a)(3), a provision of this article which applies to a protected-series transferee of a protected series of a series limited liability company applies to the company in its capacity as an owner of a protected-series distributional interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the company in its capacity as an owner of a protected-series distributional interest of the protected series.

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§31B-14-304. Management.

(a) A protected series may have more than one protected-series manager.

(b) If a protected series has no associated members, the series limited liability company is the protected-series manager.

(c) §31B-14-108 applies to determine any duties of a protected-series manager of a protected series of a series limited liability company to:

(1) The protected series;

(2) Any associated member of the protected series; and

(3) Any protected-series transferee of the protected series.

(d) Solely by reason of being or acting as a protected-series manager of a protected series of a series limited liability company, a person owes no duty to:

(1) The company;

(2) Another protected series of the company; or

(3) Another person in that person's capacity as:

(A) A member of the company which is not an associated member of the protected series;

(B) A protected-series transferee or protected-series manager of another protected series; or

(C) A transferee of the company.

(e) An associated member of a protected series of a series limited liability company has the same rights as any other member of the company to vote on or consent to an amendment to the company's operating agreement or any other matter being decided by the members, whether or not the amendment or matter affects the interests of the protected series or the associated member.

(f) §31B-11-1101 *et seq*. of this code applies to a protected series in accordance with §31B-14-108.

(g) An associated member of a protected series is an agent for the protected series with power to bind the protected series to the same extent that a member of a limited liability company is an agent for the company with power to bind the company under §31B-3-301 of this code.

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§31B-14-305. Right to information concerning protected series.

(a) A member of a series limited liability company which is not an associated member of a protected series of the company has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a member that is not a manager of a manager-managed limited liability company has a right to information concerning the company under §31B-4-408 of this code.

(b) A person formerly an associated member of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a person dissociated as a member of a manager-managed limited liability company has a right to information concerning the company under §31B-4-408 of this code.

(c) If an associated member of a protected series dies, the legal representative of the deceased associated member has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that the legal representative of a deceased member of a limited liability company has a right to information concerning the company under §31B-4-408 of this code.

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§31B-14-401. Limitations on liability.

(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

(1) A protected series of a series limited liability company solely by reason of being or acting as:

(A) An associated member, protected-series manager, or protected series transferee of the protected series; or

(B) A member, manager, or a transferee of the company; or

(2) A series limited liability company solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the company.

(b) Subject to §31B-14-404, the following rules apply:

(1) A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the company.

(2) A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

(3) A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the company solely by reason of the protected series being a protected series of the company or the company:

(A) Being or acting as a protected-series manager of the protected series;

(B) Having the protected series manage the company; or

(C) Owning a protected-series distributional interest of the protected series.

(4) A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company or another protected series of the company solely by reason of:

(A) Being a protected series of the company;

(B) Being or acting as a manager of the company or a protected-series manager of another protected series of the company; or

(C) Having the company or another protected series of the company be or act as a protected-series manager of the protected series.

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§31B-14-402. Claim seeking to disregard limitation of liability.

(a) Except as otherwise provided in subsection (b) of this section, a claim seeking to disregard a limitation in §31B-14-401 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, which would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

(b) The failure of a limited liability company or a protected series to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground to disregard a limitation in §31B-14-401(a) but may be a ground to disregard a limitation in §31B-14-401(b).

(c) This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in §31B-14-401, if:

(1) The claimant is a resident of this state or doing business or registered to do business in this state; or

(2) The claim is to establish or enforce a liability arising under law of this state other than this article or from an act or omission in this state.

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§31B-14-403. Remedies of judgment creditor of associated member or protected-series transferee.

§31B-5-504 of this code applies to a judgment creditor of:

(1) An associated member or protected-series transferee of a protected series; or

(2) A series limited liability company, to the extent the company owns a protected-series distributional interest of a protected series.

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§31B-14-404. Enforcement against non-associated asset.

(a) In this section:

(1) "Enforcement date" means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series in an action seeking to enforce under this section a claim against an asset of the company or protected series by attachment, levy, or the like.

(2) Subject to §31B-14-608(b), "incurrence date" means the date on which a series limited liability company or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

(b) If a claim against a series limited liability company or a protected series of the company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

(1) A judgment against the company may be enforced against an asset of a protected series of the company if the asset:

(A) Was a non-associated asset of the protected series on the incurrence date; or

(B) Is a non-associated asset of the protected series on the enforcement date.

(2) A judgment against a protected series may be enforced against an asset of the company if the asset:

(A) Was a non-associated asset of the company on the incurrence date; or

(B) Is a non-associated asset of the company on the enforcement date.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if the asset:

(A) Was a non-associated asset of the other protected series on the incurrence date; or

(B) Is a non-associated asset of the other protected series on the enforcement date.

(c) In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series has not been reduced to a judgment and law other than this article permits a prejudgment remedy by attachment, levy, or the like, the court may apply subsection (b) of this section as a prejudgment remedy.

(d) In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the company has the burden of proof on the issue.

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(e) This section applies to an asset of a foreign series limited liability company or foreign protected series if:

(1) The asset is real or tangible property located in this state;

(2) The claimant is a resident of this state or doing business or registered to do business in this state, or the claim under §31B-14-404 is to enforce a judgment, or to seek a pre-judgment remedy, pertaining to a liability arising from law of this state other than this article or an act or omission in this state; and

(3) The asset is not identified in the records of the foreign series limited liability company or foreign protected series in a manner comparable to the manner required by §31B-14-301.

WV Legislature

§31B-14-501. Events causing dissolution of protected series.

A protected series of a series limited liability company is dissolved, and its activities and affairs must be wound up on the:

(1) Dissolution of the company;

(2) Occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;

(3) Affirmative vote or consent of all members; or

(4) Entry by the court of an order dissolving the protected series on application by an associated member or protected-series manager of the protected series:

(A) In accordance with §31B-14-108 of this code; and

(B) 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 or manager of the company; or

(5) Entry by the court of an order dissolving the protected series on application by the company or a member of the company on the ground that the conduct of all or substantially all the activities and affairs of the protected series is illegal.

WV Legislature

§31B-14-502. Winding up dissolved protected series.

(a) Subject to subsections (b) and (c) of this section and in accordance with §31B-14-108 of this code:

(1) A dissolved protected series shall wind up its activities and affairs in the same manner that a limited liability company winds up its activities and affairs under §31B-8-801 et seq. of this code subject to the same requirements and conditions and with the same effects; and

(2) Judicial supervision or another judicial remedy is available in the winding up of the protected series to the same extent, in the same manner, under the same conditions, and with the same effects that apply under §31B-8-803(a) of this code.

(b) A dissolved protected series or series limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice under §31B-8-808 of this code.

(c) At any time after dissolution and winding up, the company may terminate a series by filing with the Secretary of State a statement of designation cancellation stating the name of the company and the protected series and that the protected series is terminated. The filing of the statement with the Secretary of State has the same effect as the filing by the Secretary of State of articles of termination under §31B-8-805 of this code.

(d) A series limited liability company has not completed its winding up until each of the protected series of the company has completed its winding up.

WV Legislature

§31B-14-503. Effect of reinstatement of series limited company or revocation of voluntary dissolution.

(a) If a series limited liability company that has been administratively dissolved applies for reinstatement, §31B-8-811 and §31B-8-812 of this code apply to each protected series of the company in accordance with §31B-14-108 of this code.

(b) If, at any time after the dissolution of a series limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, unanimously waive the right to have the company's business wound up and the company terminated, §31B-8-802(b) of this code applies to each protected series of the company in accordance with §31B-14-108 of this code.

WV Legislature

§31B-14-601. Definitions.

In this article:

"After a merger" or "after the merger" means when a merger under §31B-14-604 of this code becomes effective and afterwards.

"Before a merger" or "before the merger" means before a merger under §31B-14-604 of this code becomes effective.

"Continuing protected series" means a protected series of a surviving company which continues in uninterrupted existence after a merger under §31B-14-604 of this code.

"Merging company" means a limited liability company that is party to a merger under §31B-14-604 of this code.

"Non-surviving company" means a merging company that does not continue in existence after a merger under §31B-14-604 of this code.

"Relocated protected series" means a protected series of a non-surviving company which, after a merger under §31B-14-604 of this code, continues in uninterrupted existence as a protected series of the surviving company.

"Surviving company" means a merging company that continues in existence after a merger under §31B-14-604 of this code.

WV Legislature

§31B-14-602. Protected series may not be party to entity transaction.

A protected series may not:

(1) Acquire, be acquired, convert, merge, or survive a merger; or

(2) Be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, or conversion.

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§31B-14-603. Restriction on entity transaction involving protected series.

A series limited liability company may not:

(1) Acquire, be acquired, convert, or be converted; or

(2) Except as otherwise provided in §31B-14-604 of this code, be a party to or the surviving company of a merger.

WV Legislature

§31B-14-604. Merger authorized; parties restricted.

A series limited liability company may be party to a merger in accordance with §31B-9-904, §31B-9-905, §31B-9-906, §31B-14-604, and §31B-14-605 through §31B-14-608 of this code only if:

(1) Each other party to the merger is a limited liability company; and

(2) The surviving company is not created in the merger.

WV Legislature

§31B-14-605. Plan of merger.

In a merger under §31B-14-604 of this code, the plan of merger must:

(1) Comply with §31B-9-904 of this code; and

(2) State in a record:

(A) For any protected series of a non-surviving company, whether after the merger the protected series will be a relocated protected series or be dissolved, wound up, and terminated;

(B) For any protected series of the surviving company which exists before the merger, whether after the merger the protected series will be a continuing protected series or be dissolved, wound up, and terminated;

(C) For each relocated protected series or continuing protected series:

(i) The name of any person that becomes an associated member or protected-series transferee of the protected series after the merger, any consideration to be paid by, on behalf of, or in respect of the person, the name of the payor, and the name of the payee;

(ii) The name of any person whose rights or obligations in the person's capacity as an associated member or protected-series transferee will change after the merger;

(iii) Any consideration to be paid to a person who before the merger was an associated member or protected-series transferee of the protected series and the name of the payor; and

(iv) If after the merger the protected series will be a relocated protected series, its new name;

(D) For any protected series to be established by the surviving company as a result of the merger:

(i) The name of the protected series;

(ii) Any protected-series distributional interest to be owned by the surviving company when the protected series is established; and

(iii) The name of and any protected-series distributional interest owned by any person that will be an associated member of the protected series when the protected series is established; and

(E) For any person that is an associated member of a relocated protected series and will remain a member after the merger, any amendment to the operating agreement of the

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surviving company which:

(i) Is or is proposed to be in a record; and

(ii) Is necessary or appropriate to state the rights and obligations of the person as a member of the surviving company.

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§31B-14-606. Articles of merger.

In a merger under §31B-14-604 of this code, the articles of merger must:

(1) Comply §31B-9-905 of this code; and

(2) Include as an attachment the following records, each to become effective when the merger becomes effective:

(A) For a protected series of a merging company being terminated as a result of the merger, a statement of termination signed by the company;

(B) For a protected series of a non-surviving company which after the merger will be a relocated protected series:

(i) A statement of relocation signed by the non-surviving company which contains the name of the company and the name of the protected series before and after the merger; and

(ii) A statement of protected series designation signed by the surviving company; and

(C) For a protected series being established by the surviving company as a result of the merger, a protected series designation signed by the company.

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§31B-14-607. Effect of merger.

When a merger under §31B-14-604 becomes effective, in addition to the effects stated in §31B-9-906 of this code:

(1) As provided in the plan of merger, each protected series of each merging company which was established before the merger:

(A) Is a relocated protected series or continuing protected series; or

(B) Is dissolved, wound up, and terminated;

(2) Any protected series to be established as a result of the merger is established;

(3) Any relocated protected series or continuing protected series is the same person without interruption as it was before the merger;

(4) All property of a relocated protected series or continuing protected series continues to be vested in the protected series without transfer, reversion, or impairment;

(5) All debts, obligations, and other liabilities of a relocated protected series or continuing protected series continue as debts, obligations, and other liabilities of the protected series;

(6) Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of a relocated protected series or continuing protected series remain in the protected series;

(7) The new name of a relocated protected series may be substituted for the former name of the protected series in any pending action or proceeding;

(8) If provided in the plan of merger:

(A) A person becomes an associated member or protected-series transferee of a relocated protected series or continuing protected series;

(B) A person becomes an associated member of a protected series established by the surviving company as a result of the merger;

(C) Any change in the rights or obligations of a person in the person's capacity as an associated member or protected-series transferee of a relocated protected series or continuing protected series take effect; and

(D) Any consideration to be paid to a person that before the merger was an associated member or protected-series transferee of a relocated protected series or continuing protected series is due; and

(9) Any person that is a member of a relocated protected series becomes a member of the

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surviving company, if not already a member.

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§31B-14-608. Application of §31B-14-404 after merger.

(a) A creditor's right that existed under §31B-14-404 of this code immediately before a merger under §31B-14-604 of this code may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a non-surviving company:

(A) May be asserted against an asset of the non-surviving company which vested in the surviving company as a result of the merger; and

(B) Does not otherwise change.

(3) Subject to subsection (b), the following rules apply:

(A) In addition to the remedy stated in paragraph (1) of this section, a creditor with a right under §31B-14-404 which existed immediately before the merger against a non-surviving company or a relocated protected series may assert the right against:

(i) An asset of the surviving company, other than an asset of the non-surviving company which vested in the surviving company as a result of the merger;

(ii) An asset of a continuing protected series; or

(iii) An asset of a protected series established by the surviving company as a result of the merger;

(iv) If the creditor's right was against an asset of the non-surviving company, an asset of a relocated series; or

(v) If the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in paragraph (2) of this section, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(i) An asset of a relocated protected series; or

(ii) An asset of a non-surviving company which vested in the surviving company as a result of the merger.

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(b) For the purposes of subsection (a)(3) of this section and §31B-14-404(b)(1)(A), (2)(A), and (3)(A) of this code, the incurrence date is deemed to be the date on which the merger becomes effective.

(c) A merger under §31B-14-604 of this code does not affect the manner in which §31B-14-404 of this code applies to a liability incurred after the merger.

WV Legislature

§31B-14-701. Governing law.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) The internal affairs of a foreign protected series of the company, including:

(A) Relations among any associated members of the foreign protected series;

(B) Relations between the foreign protected series and:

(i) Any associated member;

(ii) The protected-series manager; or

(iii) Any protected-series transferee;

(C) Relations between any associated member and:

(i) The protected-series manager:

(ii) Any protected-series transferee;

(D) The rights and duties of a protected-series manager;

(E) Governance decisions affecting the activities and affairs of the foreign protected series and the conduct of those activities and affairs; and

(F) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) Relations between the foreign protected series and:

(A) The company;

(B) Another foreign protected series of the company;

(C) A member of the company which is not an associated member of the foreign protected series;

(D) A foreign protected-series manager that is not a protected-series manager of the protected series;

(E) A foreign protected-series transferee that is not a foreign protected-series transferee of the protected series; and

(F) A transferee of a distributional interest of the company;

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(3) Except as otherwise provided in §31B-14-402 of this code and §31B-14-404 of this code, the liability of a person for a debt, obligation, or other liability of a foreign protected series of a foreign series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:

(A) An associated member, protected-series transferee, or protected-series manager of the foreign protected series;

(B) A member of the company which is not an associated member of the foreign protected series;

(C) A protected-series manager of another foreign protected series of the company;

(D) A protected-series transferee of another foreign protected series of the company;

(E) A manager of the company; or

(F) A transferee of a distributional interest of the company; and

(4) Except as otherwise provided in §31B-14-402 and §31B-14-404 of this code:

(A) The liability of the foreign series limited liability company for a debt, obligation, or other liability of a foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series being a foreign protected series of the company or the company:

(i) Being or acting as a foreign protected-series manager of the foreign protected series;

(ii) Having the foreign protected series manage the company; or

(iii) Owning a protected-series distributional interest of the foreign protected series; and

(B) The liability of a foreign protected series for a debt, obligation, or other liability of the company or another foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series:

(i) Being a foreign protected series of the company or having the company or another foreign protected series of the company be or act as foreign protected-series manager of the foreign protected series; or

(ii) Managing the company or being or acting as a foreign protected-series manager of another foreign protected series of the company.

WV Legislature

§31B-14-702. No attribution of activities constituting doing business or for establishing jurisdiction.

In determining whether a foreign series limited liability company or foreign protected series of the company does business in this state or is subject to the personal jurisdiction of the courts of this state:

(1) The activities and affairs of the company are not attributable to a foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company; and

(2) The activities and affairs of a foreign protected series are not attributable to the company or another foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company.

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§31B-14-703. Registration of foreign protected series.

(a) Except as otherwise provided in this section and subject to §31B-14-402 and §31B-14-404 of this code, the law of this state governing the registration of a foreign limited liability company to do business in this state, including the consequences of not complying with that law, applies to a foreign protected series of a foreign series limited liability company as if the foreign protected series were a foreign limited liability company formed separately from the foreign series limited liability company and distinct from the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company.

(b) An application by a foreign protected series of a foreign series limited liability company for registration to do business in this state must include:

(1) The name and jurisdiction of formation of the foreign series limited liability company; and

(2) If the company has other foreign protected series, the name and street and mailing address of an individual who knows the name and street and mailing address of:

(A) Each other foreign protected series of the foreign series limited liability company; and

(B) The foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company; and

(3) Any other information required under §31B-10-1002 of this code for a foreign limited liability company's certificate of authority, including a certificate of existence or a record of similar import.

(c) The name of a foreign protected series applying for registration or registered to do business in this state must comply with §31B-14-202 of this code and may do so using a trade name under §47-8-4 of this code if the trade name complies with §31B-14-202 of this code.

(d) The requirement in §31B-2-207 of this code to amend a statement of registration to update information applies to the information required by subsection (b) of this section.

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§31B-14-704. Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

(a) Not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United States located in this state:

(1) A foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) Each foreign protected series of the company; and

(B) Each foreign protected-series manager of and a registered agent for service of process for each foreign protected series of the company; and

(2) A foreign protected series of a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) The company and each manager of the company and an agent for service of process for the company; and

(B) Any other foreign protected series of the company and each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

(b) If a foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal, the requirement that the foreign company or foreign protected series make disclosure under subsection (a) of this section is tolled until the tribunal determines whether it has personal jurisdiction.

(c) If a foreign series limited liability company or foreign protected series does not comply with subsection (a) of this section, a party to the proceeding may:

(1) Request the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

(2) Bring a separate proceeding in the court to enforce subsection (a) of this section.

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