

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0191.01 Thomas Morris x4218

HOUSE BILL 21-1026

HOUSE SPONSORSHIP

Baisley and Tipper,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ABILITY OF FOREIGN PROTECTED SERIES
102 ORGANIZATIONS TO DO BUSINESS IN COLORADO.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill defines a "protected series" as an arrangement, configuration, or other structure established by an entity formed outside of Colorado (a "foreign entity") as to which, under the organic statutes of the foreign entity:

- The assets of or associated with the protected series are not subject to claims against, or liabilities of, the foreign entity

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- or any other protected series of the foreign entity; and
The assets of or associated with the foreign entity or any other protected series of the foreign entity are not subject to claims against, or liabilities of, the protected series.

Section 2 authorizes a foreign entity that has established a protected series (a "foreign series entity") that is doing or proposing to do business in this state to file with the secretary of state a statement of foreign entity authority that states the name and principal place of business of the protected series. **Section 3** specifies the effect of filing the statement of foreign entity authority with regard to the foreign series entity's and protected series' rights and liabilities.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 7-90-102, **amend**
3 (23); and **add** (29.4) and (52.5) as follows:

4 **7-90-102. Definitions.** As used in this title 7, except as otherwise
5 defined for the purpose of any section, subpart, part, or article of this title
6 7, or unless the context otherwise requires:

7 (23) "Foreign entity" means a foreign corporation, a foreign
8 cooperative, a foreign general partnership, a foreign limited liability
9 partnership, a foreign limited liability company, a foreign limited
10 partnership, a foreign limited liability limited partnership, a foreign
11 limited partnership association, a foreign nonprofit association, a foreign
12 nonprofit corporation, or any other organization or association, OTHER
13 THAN A PROTECTED SERIES, that is formed under a statute or common law
14 of a jurisdiction other than this state or as to which the law of a
15 jurisdiction other than this state governs relations among the owners and
16 between the owners and the organization or association and is recognized
17 under the law of ~~such~~ THE jurisdiction as a separate legal entity.

18 (29.4) "FOREIGN SERIES ENTITY" MEANS A FOREIGN ENTITY THAT
19 HAS ESTABLISHED A PROTECTED SERIES.

1 (52.5) (a) "PROTECTED SERIES" MEANS AN ARRANGEMENT,
2 CONFIGURATION, OR OTHER STRUCTURE ESTABLISHED BY A FOREIGN
3 SERIES ENTITY AS TO WHICH, UNDER THE ORGANIC STATUTES OF THE
4 FOREIGN SERIES ENTITY:

5 (I) THE ASSETS OF OR ASSOCIATED WITH THE PROTECTED SERIES
6 ARE NOT SUBJECT TO CLAIMS AGAINST, OR LIABILITIES OF, THE FOREIGN
7 SERIES ENTITY OR ANY OTHER PROTECTED SERIES OF THE FOREIGN ENTITY;
8 AND

9 (II) THE ASSETS OF OR ASSOCIATED WITH THE FOREIGN SERIES
10 ENTITY OR ANY OTHER PROTECTED SERIES OF THE FOREIGN SERIES ENTITY
11 ARE NOT SUBJECT TO CLAIMS AGAINST, OR LIABILITIES OF, THE PROTECTED
12 SERIES.

13 (b) THE TERM APPLIES WHETHER OR NOT THE ORGANIC STATUTE
14 UNDER WHICH THE FOREIGN SERIES ENTITY IS FORMED REFERS TO THE
15 ARRANGEMENT, CONFIGURATION, OR OTHER STRUCTURE AS A PROTECTED
16 SERIES.

17 **SECTION 2.** In Colorado Revised Statutes, 7-90-803, **amend** (1)
18 introductory portion; and **add** (1)(i) as follows:

19 **7-90-803. Statement of foreign entity authority to transact**
20 **business or conduct activities.** (1) A foreign entity may cause to be
21 delivered to the secretary of state, for filing pursuant to part 3 of this
22 ~~article~~ ARTICLE 90, a statement of foreign entity authority stating:

23 (i) FOR A FOREIGN SERIES ENTITY ONLY, THE NAME AND PRINCIPAL
24 PLACE OF BUSINESS OF ANY PROTECTED SERIES THAT THE FOREIGN SERIES
25 ENTITY HAS ESTABLISHED THAT IS DOING OR PROPOSING TO DO BUSINESS
26 IN THIS STATE.

27 **SECTION 3.** In Colorado Revised Statutes, 7-90-805, **amend** (2)

1 and (4); and **add** (5) as follows:

2 **7-90-805. Effect of statement of foreign entity authority.**

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, a foreign
4 entity that has authority to transact business or conduct activities in this
5 state has the same rights and privileges as, but no greater rights or
6 privileges than, and, except as otherwise provided by this ~~title~~ TITLE 7, is
7 subject to the same duties, restrictions, penalties, and liabilities imposed
8 upon, a functionally equivalent domestic entity.

9 (4) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, as
10 to any foreign entity transacting business or conducting activities in this
11 state, the law of the jurisdiction under the law of which the foreign entity
12 is formed ~~shall govern~~ GOVERNS the organization and internal affairs of
13 the foreign entity and the liability of its owners and managers.

14 (5)(a) EACH PROTECTED SERIES OF A FOREIGN SERIES ENTITY THAT
15 HAS AUTHORITY TO TRANSACT BUSINESS OR CONDUCT ACTIVITIES IN THIS
16 STATE HAS THE SAME RIGHTS AND PRIVILEGES AS, BUT NO GREATER
17 RIGHTS OR PRIVILEGES THAN, AND, EXCEPT AS OTHERWISE PROVIDED BY
18 THIS TITLE 7, IS SUBJECT TO THE SAME DUTIES, RESTRICTIONS, PENALTIES,
19 AND LIABILITIES IMPOSED UPON, A DOMESTIC ENTITY THAT IS
20 FUNCTIONALLY EQUIVALENT TO THE FOREIGN SERIES ENTITY THAT HAS
21 ESTABLISHED THE PROTECTED SERIES.

22 (b) EACH FOREIGN SERIES ENTITY IS LIABLE FOR THE DEBTS,
23 OBLIGATIONS, OR OTHER LIABILITIES OF THE FOREIGN SERIES ENTITY AND
24 EACH PROTECTED SERIES THAT THE FOREIGN SERIES ENTITY HAS
25 ESTABLISHED ARISING OUT OF THE FOREIGN SERIES ENTITY'S OR THE
26 PROTECTED SERIES' TRANSACTIONS IN THIS STATE OR RELATIONSHIPS WITH
27 PERSONS IN THIS STATE.

1 (c) EXCEPT AS SET FORTH IN THIS SUBSECTION (5), AS TO ANY
2 PROTECTED SERIES TRANSACTING BUSINESS OR CONDUCTING ACTIVITIES
3 IN THIS STATE, THE LAW OF THE JURISDICTION UNDER THE LAW OF WHICH
4 THE FOREIGN SERIES ENTITY THAT ESTABLISHED THE PROTECTED SERIES
5 WAS FORMED GOVERNS THE ORGANIZATION AND INTERNAL AFFAIRS OF
6 THE PROTECTED SERIES AND THE LIABILITY OF THE OWNERS AND
7 MANAGERS ASSOCIATED WITH THE PROTECTED SERIES.

8 **SECTION 4. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
10 the expiration of the ninety-day period after final adjournment of the
11 general assembly; except that, if a referendum petition is filed pursuant
12 to section 1 (3) of article V of the state constitution against this act or an
13 item, section, or part of this act within such period, then the act, item,
14 section, or part will not take effect unless approved by the people at the
15 general election to be held in November 2022 and, in such case, will take
16 effect on the date of the official declaration of the vote thereon by the
17 governor.

18 (2) This act applies to conduct occurring on or after the applicable
19 effective date of this act.