

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0767.01 Christopher McMichael x4775

SENATE BILL 25-133

SENATE SPONSORSHIP

Snyder,

HOUSE SPONSORSHIP

Soper and Camacho,

Senate Committees

Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING VOIDABLE TRANSACTIONS, AND, IN CONNECTION**
102 **THEREWITH, UPDATING THE "COLORADO UNIFORM**
103 **FRAUDULENT TRANSFERS ACT" AND RENAMING IT THE**
104 **"COLORADO VOIDABLE TRANSACTIONS ACT".**

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>.)

Under current law, fraudulent transactions are controlled by the "Colorado Uniform Fraudulent Transfers Act". The bill makes updates to the "Colorado Uniform Fraudulent Transfers Act" and renames it as the

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

"Colorado Voidable Transactions Act" (act). The bill changes references in the act from "fraudulent transfers" to "voidable transactions".

The bill proposes changes to the act that would make the act align better with uniform law regarding voidable transactions, as well as makes updates to some of the definitions and terminology used in the act.

The bill establishes burdens of proof and evidentiary requirements for various claims under the act. The bill also establishes which jurisdictional laws control certain types of claims based on the location of a debtor and makes numerous technical amendments throughout the act.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 38-8-101 as
3 follows:

4 **38-8-101. Short title.** ~~This article shall be known and may be~~
5 ~~cited~~ THE SHORT TITLE OF THIS ARTICLE 8, WHICH WAS FORMERLY KNOWN
6 as the "Colorado Uniform Fraudulent Transfer Act", IS THE "COLORADO
7 VOIDABLE TRANSACTIONS ACT".

8 **SECTION 2.** In Colorado Revised Statutes, 38-8-102, **amend** the
9 introductory portion, (1)(a) introductory portion, (1)(a)(II), (1)(b)
10 introductory portion, (1)(b)(I), (1)(d), (3), (8) introductory portion, and
11 (10); and **add** (7.5), (7.7), (11.5), and (12.5) as follows:

12 **38-8-102. Definitions.** As used in this ~~article~~ ARTICLE 8, unless
13 the context otherwise requires:

14 (1) "Affiliate" means:

15 (a) A person ~~who~~ THAT directly or indirectly owns, controls, or
16 holds with power to vote twenty percent or more of the outstanding
17 voting securities of the debtor, other than a person ~~who~~ THAT holds the
18 securities:

19 (II) Solely to secure a debt, if the person has not IN FACT exercised
20 the power to vote;

1 (b) A corporation, twenty percent or more of whose outstanding
2 voting securities are directly or indirectly owned, controlled, or held with
3 power to vote, by the debtor or a person ~~who~~ THAT directly or indirectly
4 owns, controls, or holds with power to vote, twenty percent or more of the
5 outstanding voting securities of the debtor, other than a person ~~who~~ THAT
6 holds the securities:

7 (I) As a fiduciary or agent without sole DISCRETIONARY power to
8 vote the securities; or

9 (d) A person ~~who~~ THAT operates the debtor's business under a
10 lease or other agreement or controls substantially all of the debtor's assets.

11 (3) "Claim", EXCEPT AS THE TERM IS USED IN "CLAIM FOR RELIEF",
12 means a right to payment, whether or not the right is reduced to judgment,
13 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
14 undisputed, legal, equitable, secured, or unsecured.

15 (7.5) "ELECTRONIC" MEANS TECHNOLOGY HAVING ELECTRICAL,
16 DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR
17 CAPABILITIES.

18 (7.7) "ENTITY" HAS THE SAME MEANING AS SET FORTH IN SECTION
19 7-90-102 (20).

20 (8) "Insider" ~~means~~ INCLUDES:

21 (10) "Person" ~~means an individual, partnership, corporation,~~
22 ~~association, organization, government or governmental subdivision or~~
23 ~~agency, business trust, estate, trust, or any other legal or commercial~~
24 ~~entity~~ HAS THE MEANING SET FORTH IN SECTION 7-90-102 (49).

25 (11.5) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
26 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
27 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

1 (12.5) "SIGN" OR "SIGNATURE" HAS THE MEANING SET FORTH IN
2 SECTION 7-90-102 (60.5).

3 **SECTION 3.** In Colorado Revised Statutes, 38-8-103, **amend** (2)
4 and (3) as follows:

5 **38-8-103. Insolvency.** (2) A debtor ~~who~~ THAT is generally not
6 paying ~~his~~ THEIR debts as they become due is presumed to be insolvent.
7 THE PRESUMPTION IMPOSES ON THE DEBTOR THE BURDEN OF PROVING
8 THAT THE NONEXISTENCE OF INSOLVENCY IS MORE PROBABLE THAN THE
9 EXISTENCE OF INSOLVENCY.

10 (3) ~~A partnership is insolvent under subsection (1) of this section~~
11 ~~if the sum of the partnership's debts is greater than the aggregate of all of~~
12 ~~the partnership's assets, at a fair valuation, and the sum of the excess of~~
13 ~~the value of each general partner's nonpartnership assets over the partner's~~
14 ~~nonpartnership debts~~ A DEBTOR THAT IS INSOLVENT AS DEFINED IN 11
15 U.S.C. SEC. 101 (32) OF THE FEDERAL BANKRUPTCY CODE IS INSOLVENT.

16 **SECTION 4.** In Colorado Revised Statutes, 38-8-105, **amend** (1)
17 introductory portion, (1)(b)(II), (2) introductory portion, and (2)(k); and
18 **add** (3) as follows:

19 **38-8-105. Transfer or obligation voidable as to present and**
20 **future creditors.** (1) A transfer made or obligation incurred by a debtor
21 is ~~fraudulent~~ VOIDABLE as to a creditor, whether the creditor's claim arose
22 before or after the transfer was made or the obligation was incurred, if the
23 debtor made the transfer or incurred the obligation:

24 (b) Without receiving a reasonably equivalent value in exchange
25 for the transfer or obligation, and the debtor:

26 (II) Intended to incur, or believed or reasonably should have
27 believed that ~~he~~ THE DEBTOR would incur, debts beyond ~~his~~ THE DEBTOR'S

1 ability to pay as they became due.

2 (2) In determining actual intent under ~~paragraph (a) of subsection~~
3 ~~(1)~~ SUBSECTION (1)(a) of this section, consideration may be given, among
4 other factors, to whether:

5 (k) The debtor transferred the essential assets of the business to
6 a lienor ~~who~~ THAT transferred the assets to an insider of the debtor.

7 (3) A CREDITOR MAKING A CLAIM FOR RELIEF UNDER SUBSECTION
8 (1) OF THIS SECTION HAS THE BURDEN OF PROVING THE ELEMENTS OF THE
9 CLAIM FOR RELIEF BY A PREPONDERANCE OF THE EVIDENCE.

10 **SECTION 5.** In Colorado Revised Statutes, **amend** 38-8-106 as
11 follows:

12 **38-8-106. Transfers or obligation voidable as to present**
13 **creditors.** (1) A transfer made or obligation incurred by a debtor is
14 ~~fraudulent~~ VOIDABLE as to a creditor whose claim arose before the
15 transfer was made or the obligation was incurred if the debtor made the
16 transfer or incurred the obligation without receiving a reasonably
17 equivalent value in exchange for the transfer or obligation and the debtor
18 was insolvent at that time or the debtor became insolvent as a result of the
19 transfer or obligation.

20 (2) A transfer made by a debtor is ~~fraudulent~~ VOIDABLE as to a
21 creditor whose claim arose before the transfer was made if the transfer
22 was made to an insider for an antecedent debt, the debtor was insolvent
23 at that time, and the insider had reasonable cause to believe that the
24 debtor was insolvent.

25 (3) EXCEPT AS PROVIDED BY SECTION 38-8-103 (2), A CREDITOR
26 MAKING A CLAIM FOR RELIEF PURSUANT TO SUBSECTION (1) OR (2) OF THIS
27 SECTION HAS THE BURDEN OF PROVING THE ELEMENTS OF THE CLAIM FOR

1 RELIEF BY A PREPONDERANCE OF THE EVIDENCE.

2 **SECTION 6.** In Colorado Revised Statutes, 38-8-107, **amend** (1)
3 introductory portion, (1)(a)(I), and (5)(b) as follows:

4 **38-8-107. When transfer is made or obligation is incurred.**

5 (1) For the purposes of this ~~article~~ ARTICLE 8:

6 (a) A transfer is made:

7 (I) With respect to an asset that is real property other than a
8 fixture, but including the interest of a seller or purchaser under a contract
9 for the sale of the asset, when the transfer is so far perfected that a good
10 faith purchaser of the asset from the debtor against ~~whom~~ WHICH
11 applicable law permits the transfer to be perfected cannot acquire an
12 interest in the asset that is superior to the interest of the transferee; and

13 (5) An obligation is incurred:

14 (b) If evidenced by a ~~writing~~ RECORD, when the ~~writing executed~~
15 RECORD SIGNED by the obligor is delivered to or for the benefit of the
16 obligee.

17 **SECTION 7.** In Colorado Revised Statutes, 38-8-108, **amend** (1)
18 introductory portion and (1)(c) as follows:

19 **38-8-108. Remedies of creditors.** (1) In an action for relief
20 against a transfer or obligation under this ~~article~~ ARTICLE 8, a creditor,
21 subject to the limitations in section 38-8-109, may obtain:

22 ==

23 (c) With respect to a transfer made or obligation incurred that is
24 ~~fraudulent~~ VOIDABLE under section 38-8-105 (1)(a), a judgment for one
25 and one-half the value of the asset transferred or for one and one-half the
26 amount necessary to satisfy the creditor's claim, whichever is less,
27 together with the creditor's actual costs; except that ~~any~~ A judgment

1 entered against a person under this ~~paragraph (c)~~ SUBSECTION (1)(c) is in
2 lieu of, not in addition to, a judgment against the same person under
3 section 38-8-109 (2). ~~No~~ A judgment may NOT be entered pursuant to this
4 ~~paragraph (c)~~ SUBSECTION (1)(c) against a person other than the debtor
5 unless that person also acts with wrongful intent as defined in section
6 38-8-105 (1)(a); otherwise, judgment for money damages against a person
7 other than the debtor may be entered only as provided in section
8 38-8-109. ~~No~~ A judgment may NOT be entered under this ~~paragraph (c)~~
9 SUBSECTION (1)(c) unless a court of competent jurisdiction enters or has
10 entered a judgment or order establishing the validity of the creditor's
11 claim against the debtor.

12 **SECTION 8.** In Colorado Revised Statutes, 38-8-109, **amend** (1),
13 (2), (4) introductory portion, (4)(a), (4)(b), and (5)(b); and **add** (7) and (8)
14 as follows:

15 **38-8-109. Defenses, liability, and protection of transferee or**
16 **obligee.** (1) A transfer or obligation is not voidable under section
17 38-8-105 (1)(a) against a person ~~who~~ THAT took in good faith and for a
18 reasonably equivalent value GIVEN TO THE DEBTOR or against ~~any~~ A
19 subsequent transferee or obligee.

20 (2) TO THE EXTENT A TRANSFER IS VOIDABLE IN AN ACTION BY A
21 CREDITOR UNDER SECTION 38-8-108 (1)(a), THE FOLLOWING RULES APPLY:

22 (a) Except as otherwise provided in this section, ~~to the extent a~~
23 ~~transfer is voidable in an action by a creditor under section 38-8-108~~
24 ~~(1)(a)~~, the creditor may recover judgment for the value of the asset
25 transferred, as adjusted under subsection (3) of this section, or the amount
26 necessary to satisfy the creditor's claim, whichever is less. The judgment
27 may be entered against:

1 ~~(a)~~ (I) The first transferee of the asset or the person for whose
2 benefit the transfer was made; or

3 ~~(b)~~ (II) ~~Any subsequent~~ A DIRECT OR INDIRECT transferee OF THE
4 FIRST TRANSFEREE, other than:

5 (A) A good faith transferee ~~or obligee who~~ THAT took for value;
6 or ~~from any subsequent transferee or obligee.~~

7 (B) A DIRECT OR INDIRECT GOOD FAITH TRANSFEREE OF A PERSON
8 DESCRIBED IN SUBSECTION (2)(a)(II)(A) OF THIS SECTION;

9 ==

10 (4) Notwithstanding voidability of a transfer or an obligation
11 under this ~~article~~ ARTICLE 8, a good faith transferee or obligee is entitled,
12 to the extent of the value given the debtor for the transfer or obligation,
13 to:

14 (a) A lien on or a right to retain ~~any~~ AN interest in the asset
15 transferred;

16 (b) Enforcement of ~~any~~ AN obligation incurred; or

17 (5) A transfer is not voidable under section 38-8-105 (1)(b) or
18 38-8-106 if the transfer results from:

19 (b) Enforcement of a security interest in compliance with ~~the~~
20 ~~provisions of the "Uniform Commercial Code - Secured Transactions",~~
21 article 9 of title 4, ~~C.R.S.~~ OTHER THAN THE ACCEPTANCE OF COLLATERAL
22 IN FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES.

23 ==

24 (7) THE BURDEN OF PROVING MATTERS REFERRED TO IN THIS
25 SECTION IS DETERMINED ACCORDING TO THE FOLLOWING:

26 (a) A PARTY THAT SEEKS TO INVOKE SUBSECTION (1), (4), (5), OR
27 (6) OF THIS SECTION HAS THE BURDEN OF PROVING THE APPLICABILITY OF

1 THAT SECTION;

2 (b) EXCEPT AS PROVIDED IN SUBSECTIONS (7)(c) AND (7)(d) OF
3 THIS SECTION, THE CREDITOR HAS THE BURDEN OF PROVING EACH
4 APPLICABLE ELEMENT OF SUBSECTION (2) OR (3) OF THIS SECTION;

5 (c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE
6 APPLICABILITY TO THE TRANSFEREE OF SUBSECTION (2)(a)(II)(A) OR
7 (2)(a)(II)(B) OF THIS SECTION; AND

8 (d) A PARTY THAT SEEKS ADJUSTMENT UNDER SUBSECTION (3) OF
9 THIS SECTION HAS THE BURDEN OF PROVING THE ADJUSTMENT.

10 (8) THE STANDARD OF PROOF REQUIRED TO ESTABLISH MATTERS
11 REFERRED TO IN THIS SECTION IS PREPONDERANCE OF THE EVIDENCE.

12 **SECTION 9.** In Colorado Revised Statutes, **amend** 38-8-110 as
13 follows:

14 **38-8-110. Extinguishment of a claim for relief.** (1) A ~~cause of~~
15 ~~action~~ CLAIM FOR RELIEF with respect to a ~~fraudulent~~ VOIDABLE transfer
16 or obligation under this ~~article~~ ARTICLE 8 is extinguished unless action is
17 brought:

18 (a) Under section 38-8-105 (1)(a), ~~within~~ NOT LATER THAN four
19 years after the transfer was made or the obligation was incurred or, if
20 later, ~~within~~ NOT LATER THAN one year after the transfer or obligation was
21 or could reasonably have been discovered by the claimant;

22 (b) Under section 38-8-105 (1)(b) or 38-8-106 (1), ~~within~~ NOT
23 LATER THAN four years after the transfer was made or the obligation was
24 incurred; or

25 (c) Under section 38-8-106 (2), ~~within one year~~ NOT LATER THAN
26 FOUR YEARS after the transfer was made. ~~or the obligation was incurred.~~

27

1 **SECTION 10.** In Colorado Revised Statutes, **add** 38-8-113 as
2 follows:

3 **38-8-113. Relation to electronic signatures in the federal**
4 **"Electronic Signatures in Global and National Commerce Act".** THIS
5 ARTICLE 8 MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC
6 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC.
7 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERCEDE 15 U.S.C. SEC.
8 7001 (c) OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
9 DESCRIBED IN 15 U.S.C. SEC. 7003 (b).

10 **SECTION 11.** In Colorado Revised Statutes, 2-5-102, **amend** (7)
11 as follows:

12 **2-5-102. Inclusions - nonstatutory.** (7) There shall be included
13 in the publication of the ~~"Colorado Uniform Fraudulent Transfer Act"~~
14 "COLORADO VOIDABLE TRANSACTIONS ACT", as nonstatutory matter,
15 following each section of the article, the full text of the official comments
16 to that section contained in the official volume containing the 1984
17 official text of the "Uniform Fraudulent Transfer Act" issued by the
18 national conference of commissioners on uniform state laws, INCLUDING
19 CHANGES TO THE OFFICIAL COMMENTS MADE BY THE 2014 AMENDMENTS
20 TO THE "UNIFORM VOIDABLE TRANSACTIONS ACT", with any changes in
21 the official comments or Colorado comments to correspond to Colorado
22 changes in the uniform act. The comments shall be prepared by the
23 revisor of statutes and approved for publication by the committee on legal
24 services.

25 **SECTION 12.** **Act subject to petition - effective date -**
26 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
27 the expiration of the ninety-day period after final adjournment of the

1 general assembly; except that, if a referendum petition is filed pursuant
2 to section 1 (3) of article V of the state constitution against this act or an
3 item, section, or part of this act within such period, then the act, item,
4 section, or part will not take effect unless approved by the people at the
5 general election to be held in November 2026 and, in such case, will take
6 effect on the date of the official declaration of the vote thereon by the
7 governor.

8 (2) This act applies to claims filed on or after the applicable
9 effective date of this act.