

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 25-0767.01 Christopher McMichael x4775

SENATE BILL 25-133

SENATE SPONSORSHIP

Snyder and Carson, Roberts

HOUSE SPONSORSHIP

Soper and Camacho, Lindstedt, Marshall, Woodrow

Senate Committees
Finance

House Committees
Finance

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.

HOUSE
3rd Reading Unamended
March 13, 2025

HOUSE
Amended 2nd Reading
March 12, 2025

SENATE
3rd Reading Unamended
March 3, 2025

SENATE
Amended 2nd Reading
February 28, 2025

"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.

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

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

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

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

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

- (1) "Affiliate" means:
 - (a) A person ~~who~~ THAT directly or indirectly owns, controls, or holds with power to vote twenty percent or more of the outstanding voting securities of the debtor, other than a person ~~who~~ THAT holds the securities:
 - (II) Solely to secure a debt, if the person has not IN FACT exercised 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) and (4) 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 (4) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE LAST
11 PARAGRAPH OF COMMENT EIGHT TO SECTION FOUR OF THE "UNIFORM
12 VOIDABLE TRANSACTIONS ACT", AS AMENDED IN 2014 BY THE UNIFORM
13 LAW COMMISSION, DOES NOT APPLY IN COLORADO.

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

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

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

1 debtor was insolvent.

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

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

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

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

10 (a) A transfer is made:

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

17 (5) An obligation is incurred:

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

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

23 **38-8-108. Remedies of creditors.** (1) In an action for relief
24 against a transfer or obligation under this ~~article~~ ARTICLE 8, a creditor,
25 subject to the limitations in section 38-8-109, may obtain:

26 ==

27 (c) With respect to a transfer made or obligation incurred that is

1 ~~fraudulent~~ VOIDABLE under section 38-8-105 (1)(a), a judgment for one
2 and one-half the value of the asset transferred or for one and one-half the
3 amount necessary to satisfy the creditor's claim, whichever is less,
4 together with the creditor's actual costs; except that ~~any~~ A judgment
5 entered against a person under this ~~paragraph (c)~~ SUBSECTION (1)(c) is in
6 lieu of, not in addition to, a judgment against the same person under
7 section 38-8-109 (2). ~~No~~ A judgment may NOT be entered pursuant to this
8 ~~paragraph (c)~~ SUBSECTION (1)(c) against a person other than the debtor
9 unless that person also acts with wrongful intent as defined in section
10 38-8-105 (1)(a); otherwise, judgment for money damages against a person
11 other than the debtor may be entered only as provided in section
12 38-8-109. ~~No~~ A judgment may NOT be entered under this ~~paragraph (c)~~
13 SUBSECTION (1)(c) unless a court of competent jurisdiction enters or has
14 entered a judgment or order establishing the validity of the creditor's
15 claim against the debtor.

16 **SECTION 8.** In Colorado Revised Statutes, 38-8-109, **amend** (1),
17 (2), (4) introductory portion, (4)(a), (4)(b), and (5)(b); and **add** (7) and (8)
18 as follows:

19 **38-8-109. Defenses, liability, and protection of transferee or**
20 **obligee.** (1) A transfer or obligation is not voidable under section
21 38-8-105 (1)(a) against a person ~~who~~ THAT took in good faith and for a
22 reasonably equivalent value GIVEN TO THE DEBTOR or against ~~any~~ A
23 subsequent transferee or obligee.

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

26 (a) Except as otherwise provided in this section, ~~to the extent a~~
27 ~~transfer is voidable in an action by a creditor under section 38-8-108~~

1 ~~(1)(a)~~, the creditor may recover judgment for the value of the asset
2 transferred, as adjusted under subsection (3) of this section, or the amount
3 necessary to satisfy the creditor's claim, whichever is less. The judgment
4 may be entered against:

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

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

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

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

13 ==

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

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

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

21 (5) A transfer is not voidable under section 38-8-105 (1)(b) or
22 38-8-106 if the transfer results from:

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

27 ==

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

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

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

9 (c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE
10 APPLICABILITY TO THE TRANSFEREE OF SUBSECTION (2)(a)(II)(A) OR
11 (2)(a)(II)(B) OF THIS SECTION; AND

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

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

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

18 **38-8-110. Extinguishment of a claim for relief.** (1) A ~~cause of~~
19 ~~action~~ CLAIM FOR RELIEF with respect to a ~~fraudulent~~ VOIDABLE transfer
20 or obligation under this ~~article~~ ARTICLE 8 is extinguished unless action is
21 brought:

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

26 (b) Under section 38-8-105 (1)(b) or 38-8-106 (1), ~~within~~ NOT
27 LATER THAN four years after the transfer was made or the obligation was

1 incurred; or

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

4 ==

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

7 **38-8-113. Relation to electronic signatures in the federal**
8 **"Electronic Signatures in Global and National Commerce Act".** THIS
9 ARTICLE 8 MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC
10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC.
11 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERCEDE 15 U.S.C. SEC.
12 7001 (c) OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
13 DESCRIBED IN 15 U.S.C. SEC. 7003 (b).

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

16 **2-5-102. Inclusions - nonstatutory.** (7) There shall be included
17 in the publication of the "~~Colorado Uniform Fraudulent Transfer Act~~"
18 "COLORADO VOIDABLE TRANSACTIONS ACT", as nonstatutory matter,
19 ~~following each section of the article, the full text of the official comments~~
20 ~~to that section contained in the official volume containing the 1984~~
21 ~~official text of the "Uniform Fraudulent Transfer Act" issued by the~~
22 ~~national conference of commissioners on uniform state laws, with any~~
23 ~~changes in the official comments or Colorado comments to correspond to~~
24 ~~Colorado changes in the uniform act~~ GUIDANCE ON HOW TO ACCESS THE
25 OFFICIAL COMMENTS OF THE "UNIFORM VOIDABLE TRANSACTIONS ACT".
26 The ~~comments~~ GUIDANCE ON HOW TO ACCESS THE OFFICIAL COMMENTS
27 shall be prepared by the revisor of statutes and approved for publication

1 by the committee on legal services.

2 **SECTION 12. Act subject to petition - effective date -**
3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
4 the expiration of the ninety-day period after final adjournment of the
5 general assembly; except that, if a referendum petition is filed pursuant
6 to section 1 (3) of article V of the state constitution against this act or an
7 item, section, or part of this act within such period, then the act, item,
8 section, or part will not take effect unless approved by the people at the
9 general election to be held in November 2026 and, in such case, will take
10 effect on the date of the official declaration of the vote thereon by the
11 governor.
12 (2) This act applies to claims filed on or after the applicable
13 effective date of this act.