

First Regular Session  
Seventy-fifth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 25-0767.01 Christopher McMichael x4775

SENATE BILL 25-133

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SENATE SPONSORSHIP

Snyder,

HOUSE SPONSORSHIP

Soper and Camacho,

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Senate Committees  
Finance

House Committees

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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".

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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.

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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, OTHER THAN AS A RESULT OF  
7 A BONA FIDE DISPUTE, is presumed to be insolvent. THE PRESUMPTION  
8 IMPOSES ON THE DEBTOR THE BURDEN OF PROVING THAT THE  
9 NONEXISTENCE OF INSOLVENCY IS MORE PROBABLE THAN THE EXISTENCE  
10 OF INSOLVENCY.

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

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

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

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

27 (II) Intended to incur, or believed or reasonably should have

1 believed that ~~he~~ THE DEBTOR would incur, debts beyond ~~his~~ THE DEBTOR'S  
2 ability to pay as they became due.

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

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

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

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

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

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

26 (3) NOTWITHSTANDING SECTION 38-8-103 (2), A CREDITOR  
27 MAKING A CLAIM FOR RELIEF PURSUANT TO SUBSECTION (1) OR (2) OF THIS

1 SECTION HAS THE BURDEN OF PROVING THE ELEMENTS OF THE CLAIM FOR  
2 RELIEF BY A PREPONDERANCE OF THE EVIDENCE.

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

5 **38-8-107. When transfer is made or obligation is incurred.**

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

7 (a) A transfer is made:

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

14 (5) An obligation is incurred:

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

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

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

23 (b) An attachment or other provisional remedy against the asset  
24 transferred or other property of the transferee ~~in accordance with the~~  
25 ~~procedure prescribed by the Colorado rules of civil procedure~~ IF  
26 AVAILABLE UNDER APPLICABLE STATE LAW;

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), (5)(b), and (6)(a); and **add** (7)  
18 and (8) 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~~ AN IMMEDIATE OR MEDIATE transferee OF  
8 THE 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) AN IMMEDIATE OR MEDIATE GOOD FAITH TRANSFEREE OF A  
12 PERSON DESCRIBED IN SUBSECTION (2)(a)(II)(A) OF THIS SECTION;

13       (b) RECOVERY PURSUANT TO SECTION 38-8-108 (1)(a) OR (2) OF OR  
14 FROM THE ASSET TRANSFERRED OR ITS PROCEEDS, BY LEVY OR OTHERWISE,  
15 IS AVAILABLE ONLY AGAINST A PERSON DESCRIBED IN SUBSECTION  
16 (2)(a)(I) OR (2)(a)(II) OF THIS SECTION.

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

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

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

24       (5) A transfer is not voidable under section 38-8-105 (1)(b) or  
25 38-8-106 if the transfer results from:

26           (b) Enforcement of a security interest in compliance with ~~the~~  
27 ~~provisions of~~ the "Uniform Commercial Code - Secured Transactions",



1 article 9 of title 4, ~~C.R.S.~~ OTHER THAN THE ACCEPTANCE OF COLLATERAL  
2 IN FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES.

3 (6) A transfer is not voidable under section 38-8-106 (2):

4 (a) To the extent the insider gave new value to or for the benefit  
5 of the debtor after the transfer was made, ~~unless~~ EXCEPT TO THE EXTENT  
6 the new value was secured by a valid lien;

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

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

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

15 (c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE  
16 APPLICABILITY TO THE TRANSFEREE OF SUBSECTION (2)(a)(II)(A) OR  
17 (2)(a)(II)(B) OF THIS SECTION; AND

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

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

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

24 **38-8-110. Extinguishment of a claim for relief.** (1) A ~~cause of~~  
25 ~~action~~ CLAIM FOR RELIEF with respect to a ~~fraudulent~~ VOIDABLE transfer  
26 or obligation under this ~~article~~ ARTICLE 8 is extinguished unless action is  
27 brought:

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

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

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

10 **SECTION 10.** In Colorado Revised Statutes, **add** 38-8-110.5 as  
11 follows:

12 **38-8-110.5. Governing law - location and jurisdiction.** (1) A  
13 DEBTOR'S LOCATION FOR THE PURPOSES OF THIS SECTION IS DETERMINED  
14 BASED ON THE FOLLOWING:

15 (a) A DEBTOR WHO IS AN INDIVIDUAL IS LOCATED AT THE  
16 INDIVIDUAL'S PRINCIPAL RESIDENCE;

17 (b) A DEBTOR THAT IS AN ENTITY AND HAS ONLY ONE PLACE OF  
18 BUSINESS IS LOCATED AT ITS PLACE OF BUSINESS; AND

19 (c) A DEBTOR THAT IS AN ENTITY AND HAS MORE THAN ONE PLACE  
20 OF BUSINESS IS LOCATED AT THE ENTITY'S CHIEF EXECUTIVE OFFICE.

21 (2) A CLAIM FOR RELIEF IN THE NATURE OF A CLAIM FOR RELIEF  
22 UNDER THIS ARTICLE 8 IS GOVERNED BY THE LAWS OF THE JURISDICTION  
23 IN WHICH THE DEBTOR OR ASSET IS LOCATED WHEN THE TRANSFER IS MADE  
24 OR THE OBLIGATION IS INCURRED.

25 **SECTION 11.** In Colorado Revised Statutes, **add** 38-8-113 as  
26 follows:

27 **38-8-113. Relation to electronic signatures in the federal**

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

7             **SECTION 12.** In Colorado Revised Statutes, 2-5-102, **amend** (7)  
8     as follows:

9             **2-5-102. Inclusions - nonstatutory.** (7) There shall be included  
10     in the publication of the ~~"Colorado Uniform Fraudulent Transfer Act"~~  
11     "COLORADO VOIDABLE TRANSACTIONS ACT", as nonstatutory matter,  
12     following each section of the article, the full text of the official comments  
13     to that section contained in the official volume containing the 1984  
14     official text of the "Uniform Fraudulent Transfer Act" issued by the  
15     national conference of commissioners on uniform state laws, INCLUDING  
16     CHANGES TO THE OFFICIAL COMMENTS MADE BY THE 2014 AMENDMENTS  
17     TO THE "UNIFORM VOIDABLE TRANSACTIONS ACT", with any changes in  
18     the official comments or Colorado comments to correspond to Colorado  
19     changes in the uniform act. The comments shall be prepared by the  
20     revisor of statutes and approved for publication by the committee on legal  
21     services.

22             **SECTION 13. Act subject to petition - effective date -**  
23     **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
24     the expiration of the ninety-day period after final adjournment of the  
25     general assembly; except that, if a referendum petition is filed pursuant  
26     to section 1 (3) of article V of the state constitution against this act or an  
27     item, section, or part of this act within such period, then the act, item,

1 section, or part will not take effect unless approved by the people at the  
2 general election to be held in November 2026 and, in such case, will take  
3 effect on the date of the official declaration of the vote thereon by the  
4 governor.

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