AGENDA

Colorado Commission on Uniform State Laws

JANUARY 28, 2015, 12:00 P.M.
COMMITTEE ROOM: SCR 356

1. Election of chairperson for 2015

2. Proposed 2015 legislative agenda
   a. Interstate Family Support Act Amendments (2008), LLS 15-0666
   b. Fiduciary Access to Digital Assets Act, LLS 15-0667
   c. Recognition of Substitute Decision-making Documents Act, LLS 15-0668
   d. Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act), LLS 15-0669
   e. Revisions to the Uniform Common Interest Ownership Act Section 3-116, LLS 15-0670

3. Other business

4. Public comment
A BILL FOR AN ACT

CONCERNING ENACTMENT OF THE 2008 AMENDMENTS TO THE "UNIFORM INTERSTATE FAMILY SUPPORT 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://www.leg.state.co.us/billsummaries.)

Colorado Commission on Uniform State Laws. This bill updates the "Uniform Interstate Family Support Act" (UIFSA) with the 2008 amendments to UIFSA, adopted by the national conference of commissioners on uniform state laws. UIFSA provides uniform rules for the enforcement of family support orders.

In November 2007, the United States signed The Hague
Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("Convention"). The Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. In 2008, the national conference of commissioners on uniform state laws amended UIFSA to incorporate changes required by the Convention. The amendments implement the requirements of the Convention throughout the states and improve the enforcement of American child support orders in foreign countries.

Most of the 2008 amendments are in part 7 of UIFSA. Part 7 provides guidelines and procedures for the registration, recognition, enforcement, and modification of foreign support orders from countries that are parties to the Convention. Part 7 provides that a support order from a country that has agreed to the Convention must be registered immediately unless a tribunal in the state where the registration is sought determines that the language of the order goes against the policy of the state. Once registered, the nonregistering party receives notice and is allowed the opportunity to challenge the order on certain grounds. Part 7 also requires that documents submitted under the Convention must be in the original language and, if not in English, must be accompanied by an English translation.

In September 2014, Congress passed the federal "Preventing Sex Trafficking and Strengthening Families Act", which implemented the Convention. The new federal law enacts various amendments to federal law to ensure access to child support services in international child support cases. The new federal law requires that all states enact UIFSA 2008 as a condition for continued receipt of federal funds supporting state child support programs. In order to retain Part IV-D funding under the "Social Security Act", states will need to enact the updated 2008 UIFSA by the end of their 2015 legislative sessions.

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

SECTION 1. In Colorado Revised Statutes, 14-5-102, amend (2), (4), (8), (9), (10), (12), (13), (14), (16), (17), (18), (19), (21), (22), (23), and (24); repeal (7); and add (2.5), (3.3), (3.4), (3.5), (8.5), and (13.5) as follows:

14-5-102. Definitions. In this article:

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state OR FOREIGN COUNTRY.
(2.5) "CONVENTION" means the CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE, concluded at THE HAGUE on NOVEMBER 23, 2007.

(3.3) "FOREIGN COUNTRY" means a country, including a political subdivision thereof, other than the UNITED STATES, that authorizes the issuance of support orders and:

(A) Which has been declared under the law of the UNITED STATES to be a foreign reciprocating country;

(B) Which has established a reciprocal arrangement for child support with this state as provided in section 14-5-308;

(C) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this article; <{We need an "AND or an "OR" here. Is a country required to meet all of A, B, C, D? Or only one of them?}>

(D) In which the convention is in force with respect to the UNITED STATES.

(3.4) "FOREIGN SUPPORT ORDER" means a support order of a FOREIGN TRIBUNAL.

(3.5) "FOREIGN TRIBUNAL" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(4) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six
consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this article or a law or procedure substantially similar to this article.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(8.5) "ISSUING FOREIGN COUNTRY" MEANS THE FOREIGN COUNTRY IN WHICH A TRIBUNAL ISSUES A SUPPORT ORDER OR A JUDGMENT DETERMINING PARENTAGE OF A CHILD.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage of a child.

(10) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or renders a judgment determining parentage of a child.

(12) "Obligee" means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage of a child has been rendered;

(B) A foreign country, state, or political subdivision of a
STATE to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee or IN PLACE OF CHILD SUPPORT;

(C) An individual seeking a judgment determining parentage of the individual's child; or

(D) A PERSON THAT IS A CREDITOR IN A PROCEEDING UNDER PART 7 OF THIS ARTICLE.

(13) "Obligor" means an individual, or the estate of a decedent THAT:

(A) Who Owes or is alleged to owe a duty of support;

(B) Who Is alleged but has not been adjudicated to be a parent of a child; or

(C) Who Is liable under a support order; or

(D) IS A DEBTOR IN A PROCEEDING UNDER PART 7 OF THIS ARTICLE.

(13.5) "OUTSIDE THIS STATE" MEANS A LOCATION IN ANOTHER STATE OR A COUNTRY OTHER THAN THE UNITED STATES, WHETHER OR NOT THE COUNTRY IS A FOREIGN COUNTRY.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, PUBLIC CORPORATION, government, OR governmental subdivision, agency, or instrumentality, public corporation; or any other legal or commercial entity.

(16) "Register" means to file IN A TRIBUNAL OF THIS STATE a support order or judgment determining parentage OF A CHILD ISSUED IN ANOTHER STATE OR A FOREIGN COUNTRY.
(17) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(18) "Responding state" means a state in which a proceeding petition or comparable pleading for support or to determine parentage of a child is filed or to which a proceeding petition or comparable pleading is forwarded for filing from an initiating another state under this article or a law or procedure substantially similar to this article or a foreign country.

(19) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

(21) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(A) An Indian nation or tribe.

(B) A foreign country or political subdivision that:

(i) Has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) Has established a reciprocal arrangement for child support with this state as provided in section 14-5-308; or

(iii) Has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this article.

(22) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to: seek:

(A) Seek enforcement of support orders or laws relating to the duty of support;
(B) SEEK establishment or modification of child support;

(C) REQUEST determination of parentage of a CHILD;

(D) Attempt to LOCATE obligors or their assets; or

(E) REQUEST determination of the controlling child support order.

(23) "Support order" means a judgment, decree, order, DECISION, or directive, whether temporary, final, or subject to modification, issued by a tribunal, IN A STATE OR FOREIGN COUNTRY for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, RETROACTIVE SUPPORT, or reimbursement and for FINANCIAL ASSISTANCE PROVIDED TO AN INDIVIDUAL OBLIGEE IN PLACE OF CHILD SUPPORT. THE TERM may include related costs and fees, interest, income withholding, AUTOMATIC ADJUSTMENT, REASONABLE attorney's fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage OF A CHILD.

SECTION 2. In Colorado Revised Statutes, amend 14-5-103 as follows:

14-5-103. State tribunals and support enforcement agency.

(a) The court and the administrative agency are the tribunals of this state.

(b) The [PUBLIC OFFICIAL, GOVERNMENTAL ENTITY, OR PRIVATE AGENCY] ARE THE SUPPORT ENFORCEMENT AGENCIES OF THIS STATE.

SECTION 3. In Colorado Revised Statutes, 14-5-104, amend (a) as follows:

14-5-104. Remedies cumulative. (a) Remedies provided by this
article are cumulative and do not affect the availability of remedies under other law including the recognition of a FOREIGN support order of a foreign country or political subdivision on the basis of comity.

SECTION 4. In Colorado Revised Statutes, add 14-5-105 as follows:

14-5-105. Application of article to resident of foreign country and foreign support proceeding. (a) A TRIBUNAL OF THIS STATE SHALL APPLY PARTS 1 THROUGH 6 OF THIS ARTICLE AND, AS APPLICABLE, PART 7 OF THIS ARTICLE, TO A SUPPORT PROCEEDING INVOLVING:

(1) A FOREIGN SUPPORT ORDER;

(2) A FOREIGN TRIBUNAL; OR

(3) AN OBLIGEE, OBLIGOR, OR CHILD RESIDING IN A FOREIGN COUNTRY.

(b) A TRIBUNAL OF THIS STATE THAT IS REQUESTED TO RECOGNIZE AND ENFORCE A SUPPORT ORDER ON THE BASIS OF COMITY MAY APPLY THE PROCEDURAL AND SUBSTANTIATIVE PROVISIONS OF PARTS 1 THROUGH 6.

(c) PART 7 OF THIS ARTICLE APPLIES ONLY TO A SUPPORT PROCEEDING UNDER THE CONVENTION. IN SUCH A PROCEEDING, IF A PROVISION OF PART 7 OF THIS ARTICLE IS INCONSISTENT WITH PARTS 1 THROUGH 6 OF THIS ARTICLE, PART 7 OF THIS ARTICLE CONTROLS.

SECTION 5. In Colorado Revised Statutes, amend 14-5-201 as follows:

14-5-201. Bases for jurisdiction over nonresident. (a) In a proceeding to establish or enforce a support order or to determine parentage OF A CHILD, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
(1) The individual is personally served with a summons within this state;

(2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) The individual asserted parentage of a child in the putative father registry maintained in this state by the registrar of vital statistics; or see §25-2-112 (3) registrar accepts forms re: putative fathers but I'm not sure if CO has a putative father registry - what should be put here?

(7) (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of the this state to modify a child support order of another state unless the requirements of section 14-5-611 or 14-5-615 are met, or in the case of a foreign support order, unless the requirements of section 14-5-615 are met.

SECTION 6. In Colorado Revised Statutes, amend 14-5-203 as
1.21.15

1 follows:

14-5-203. Initiating and responding tribunals of this state. Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state, and as a responding tribunal for proceedings initiated in another state or a foreign country.

SECTION 7. In Colorado Revised Statutes, amend 14-5-204 as follows:

14-5-204. Simultaneous proceedings. (a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:

(1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) If relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
The contesting party timely challenges the exercise of jurisdiction in this state; and

If relevant, the other state or foreign country is the home state of the child.

SECTION 8. In Colorado Revised Statutes, 14-5-206, amend (a) (2) as follows:

14-5-206. Continuing jurisdiction to enforce child support order. (a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

SECTION 9. In Colorado Revised Statutes, 14-5-207, amend (a), (b), and (c) as follows:

14-5-207. Determination of controlling child support order. (a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this state, or another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal controls.
be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article:

(A) An order issued by a tribunal in the current home state of the child controls; OR

(B) If an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of this state shall issue a child support order, which controls.

(c) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or THAT IS a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to part 6 of this article, or may be filed as a separate proceeding.

SECTION 10. In Colorado Revised Statutes, amend 14-5-208 as follows:

14-5-208. Child support orders for two or more obligees. In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state OR A FOREIGN COUNTRY, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.
SECTION 11. In Colorado Revised Statutes, amend 14-5-209 as follows:

14-5-209. Credit for payment. A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or STATE, another state, OR A FOREIGN COUNTRY.

SECTION 12. In Colorado Revised Statutes, amend 14-5-210 as follows:

14-5-210. Application of article to nonresident subject to personal jurisdiction. A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this article, under other law of this state relating to a support order, or recognizing a FOREIGN support order of a foreign country or political subdivision on the basis of comity may receive evidence from another OUTSIDE THIS state pursuant to section 14-5-316, communicate with a tribunal of another OUTSIDE THIS state pursuant to section 14-5-317, and obtain discovery through a tribunal of another OUTSIDE THIS state pursuant to section 14-5-318. In all other respects, parts 3 to 7 of this article do not apply, and the tribunal shall apply the procedural and substantive law of this state.

SECTION 13. In Colorado Revised Statutes, 14-5-211, amend (b) as follows:

14-5-211. Continuing, exclusive jurisdiction to modify spousal-support order. (b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state OR A FOREIGN COUNTRY having continuing, exclusive jurisdiction over that order under
the law of that state OR FOREIGN COUNTRY.

SECTION 14. In Colorado Revised Statutes, 14-5-301, amend (b) as follows:

14-5-301. Proceedings under article. (b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state OR FOREIGN COUNTRY which has or can obtain personal jurisdiction over the respondent.

SECTION 15. In Colorado Revised Statutes, 14-5-304, amend (b) as follows:

14-5-304. Duties of initiating tribunal. (b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state TRIBUNAL is in a foreign country, or political subdivision, upon request the tribunal OF THIS STATE shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state FOREIGN TRIBUNAL.

SECTION 16. In Colorado Revised Statutes, 14-5-305, amend (b) (1) and (b) (8) as follows:

14-5-305. Duties and powers of responding tribunal. (b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) Issue Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine
parentage OF A CHILD;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, ELECTRONIC-MAIL ADDRESS, telephone number, employer, address of employment, and telephone number at the place of employment;

SECTION 17. In Colorado Revised Statutes, amend 14-5-306 as follows:

14-5-306. Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

SECTION 18. In Colorado Revised Statutes, 14-5-307, amend (a), (b) (1), and (e) as follows:

Alternative A:

14-5-307. Duties of support enforcement agency. (a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this article. <Alternative A has no changes to (a)>

Alternative B:

14-5-307. Duties of support enforcement agency. (a) In a proceeding under this article, a support enforcement agency of this state, upon request:

(1) Shall provide services to a petitioner in a proceeding under this article RESIDING IN A STATE;

(2) SHALL PROVIDE SERVICES TO A PETITIONER REQUESTING SERVICES THROUGH A CENTRAL AUTHORITY OF A FOREIGN COUNTRY AS
DESCRIBED IN SECTION 14-5-102 (3.3) (A) OR (D); AND

(3) MAY PROVIDE SERVICES TO A PETITIONER WHO IS AN INDIVIDUAL NOT RESIDING IN A STATE.

<do you choose Alternative A or Alternative B?>

**Legislative Note:** The state legislature may adopt Alternative A at any time in order to maintain the practice under current law. The state legislature may choose to adopt Alternative B if the federal legislation enabling the entry into force of the Convention contains a provision authorizing an option for the state enforcement agency to accept or reject an application for services originating in a foreign country that is not a country defined in Section 102(5)(A) or (D), a foreign reciprocating country or a foreign treaty country respectively.

<the citation is to section 14-5-102 (3.3) (A) or (D); what is the answer to this question? what did Congress do in enacting the federal legislation?>

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal in this state, or another state, or a foreign country to obtain jurisdiction over the respondent;

(e) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 14-5-319. of the "Uniform Interstate Family Support Act".

**SECTION 19.** In Colorado Revised Statutes, 14-5-308, amend
(b) as follows:

14-5-308. Duty of attorney general. (b) The attorney general may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

SECTION 20. In Colorado Revised Statutes, 14-5-310, amend (b) (3) as follows:

14-5-310. Duties of state information agency. (b) The state information agency shall:

(3) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this article received from an initiating tribunal or the state information agency of the initiating ANOTHER state OR A FOREIGN COUNTRY; and

SECTION 21. In Colorado Revised Statutes, 14-5-311, amend (a) as follows:

14-5-311. Pleadings and accompanying documents. (a) In a proceeding under this article, a petitioner seeking to establish a support order, to determine parentage OF A CHILD, or to register and modify a support order OF A TRIBUNAL of another state OR A FOREIGN COUNTRY must file a petition. Unless otherwise ordered under section 14-5-312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless
filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

**SECTION 22.** In Colorado Revised Statutes, 14-5-313, amend (b) as follows:

**14-5-313. Costs and fees.** (b) If an obligee prevails, a responding tribunal OF THIS STATE may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state OR FOREIGN COUNTRY, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

**SECTION 23.** In Colorado Revised Statutes, 14-5-316, amend (a), (b), (d), (e), and (f) as follows:

**14-5-316. Special rules of evidence and procedure.** (a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage OF A CHILD.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in
1 person, is admissible in evidence if given under penalty of perjury by a
2 party or witness residing in another OUTSIDE THIS state.
3
   (d) Copies of bills for testing for parentage OF A CHILD, and for
4 prenatal and postnatal health care of the mother and child, furnished to
5 the adverse party at least ten days before trial, are admissible in evidence
6 to prove the amount of the charges billed and that the charges were
7 reasonable, necessary, and customary.
8
   (e) Documentary evidence transmitted from another OUTSIDE THIS
9 state to a tribunal of this state by telephone, telecopier, or other
10 ELECTRONIC means that do not provide an original record may not be
11 excluded from evidence on an objection based on the means of
12 transmission.
13
   (f) In a proceeding under this article, a tribunal of this state shall
14 permit a party or witness residing in another OUTSIDE THIS state to be
15 deposed or to testify UNDER PENALTY OF PERJURY <the current CO law
16 does not include "under penalty of perjury" even though this appears
17 to be the language from the previous UIFSA bill - I wonder if a choice
18 was made in 2003 not to include this language? do you want to add it
19 now or leave it out?> by telephone, audiovisual means, or other
20 electronic means at a designated tribunal or other location. in that state.
21 A tribunal of this state shall cooperate with OTHER tribunals of other
22 states in designating an appropriate location for the deposition or
23 testimony.

SECTION 24. In Colorado Revised Statutes, amend 14-5-317 as
25 follows:

14-5-317. Communications between tribunals. A tribunal of
26 this state may communicate with a tribunal of another OUTSIDE THIS state
or foreign country or political subdivision in a record, or by telephone, 
ELECTRONIC MAIL, or other means, to obtain information concerning the 

laws, the legal effect of a judgment, decree, or order of that tribunal, and 
the status of a proceeding in the other state or foreign country or political 
subdivision. A tribunal of this state may furnish similar information by 
similar means to a tribunal of another OUTSIDE THIS state or foreign 
country or political subdivision.

SECTION 25. In Colorado Revised Statutes, amend 14-5-318 as 
follows:

14-5-318. Assistance with discovery. A tribunal of this state 
may:

(1) Request a tribunal of another OUTSIDE THIS state to assist in 
obtaining discovery; and

(2) Upon request, compel a person over whom WHICH it has 
jurisdiction to respond to a discovery order issued by a tribunal of another 
OUTSIDE THIS state.

SECTION 26. In Colorado Revised Statutes, 14-5-319, amend 
(a) as follows:

14-5-319. Receipt and disbursement of payments. (a) A 
support enforcement agency or tribunal of this state shall disburse 
promptly any amounts received pursuant to a support order, as directed 
by the order. The agency or tribunal shall furnish to a requesting party or 
tribunal of another state OR A FOREIGN COUNTRY a certified statement by 
the custodian of the record of the amounts and dates of all payments 
received.

SECTION 27. In Colorado Revised Statutes, amend part 4 of 
article 5 of title 14 as follows:
1.21.15

PART 4

ESTABLISHMENT OF SUPPORT ORDER

OR DETERMINATION OF PARENTAGE

14-5-401. Establishment of support order. (a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state WITH PERSONAL JURISDICTION OVER THE PARTIES may issue a support order if:

(1) The individual seeking the order resides in another state; or

(2) The support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) A presumed father of the child;

(2) Petitioning to have his paternity adjudicated;

(3) Identified as the father of the child through genetic testing;

(4) An alleged father who has declined to submit to genetic testing;

(5) Shown by clear and convincing evidence to be the father of the child;

(6) An acknowledged father as provided by section 19-4-105 (1) (e), C.R.S.;

(7) The mother of the child; or

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an
obligor owes a duty of support, the tribunal shall issue a support order
directed to the obligor and may issue other orders pursuant to section
14-5-305.

14-5-402. Proceeding to determine parentage. A tribunal of
this state authorized to determine parentage of a child may
serve as a responding tribunal in a proceeding to determine
parentage of a child brought under this article or a law or
procedure substantially similar to this article.

SECTION 28. In Colorado Revised Statutes, amend 14-5-504 as
follows:

14-5-504. Immunity from civil liability. An employer who
complies with an income-withholding order issued in another state in
accordance with this article is not subject to civil liability to an individual
or agency with regard to the employer's withholding of child support from
the obligor's income.

SECTION 29. In Colorado Revised Statutes, amend 14-5-505 as
follows:

14-5-505. Penalties for noncompliance. An employer who
willfully fails to comply with an income-withholding order issued by in
another state and received for enforcement is subject to the same penalties
that may be imposed for noncompliance with an order issued by a tribunal
of this state.

SECTION 30. In Colorado Revised Statutes, 14-5-507, amend
(a) as follows:

14-5-507. Administrative enforcement of orders. (a) A party
or support enforcement agency seeking to enforce a support order or an
income-withholding order, or both, issued by a tribunal of in another state
OR A FOREIGN SUPPORT ORDER may send the documents required for registering the order to a support enforcement agency of this state.

SECTION 31. In Colorado Revised Statutes, amend part 6 of article 5 of title 14 as follows:

PART 6
REGISTRATION, ENFORCEMENT, AND MODIFICATION
OF SUPPORT ORDER
PART A. REGISTRATION FOR ENFORCEMENT
OF SUPPORT ORDER

14-5-601. Registration of order for enforcement. A support order or income-withholding order issued by a tribunal of another state OR A FOREIGN SUPPORT ORDER may be registered in this state for enforcement.

14-5-602. Procedure to register order for enforcement. (a) Except as otherwise provided in section 14-5-706, a support order or income-withholding order of another state OR A FOREIGN SUPPORT ORDER may be registered in this state by sending the following records and information to the appropriate tribunal in this state:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

(A) The obligor's address and social security number;
1. The name and address of the obligor's employer and any other source of income of the obligor; and

2. A description and the location of property of the obligor in this state not exempt from execution; and

3. Except as otherwise provided in section 14-5-312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

1. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

2. Specify the order alleged to be the controlling order, if any; and

3. Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.
14-5-603. Effect of registration for enforcement. (a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this part 6, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

14-5-604. Choice of law. (a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state or foreign country governs:

(1) The nature, extent, amount, and duration of current payments under a registered support order;

(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrearages under a registered support order, the statute of limitation of this state, or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and to collect arrearages and interest due on a support order of another state or a foreign country.
FOREIGN COUNTRY registered in this state.

(d) After a tribunal of this STATE or another state determines which is the controlling order and issues an order consolidating arrearages, if any, a tribunal of this state shall prospectively apply the law of the state OR FOREIGN COUNTRY issuing the controlling order, including its law on interest on arrearages, on current and future support, and on consolidated arrearages.

PART B. CONTEST OF VALIDITY OR ENFORCEMENT

14-5-605. Notice of registration of order. (a) When a support order or income-withholding order issued in another state OR A FOREIGN SUPPORT ORDER is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice UNLESS THE REGISTERED ORDER IS UNDER SECTION 14-5-707;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) Of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:
(1) Identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrearages, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, THE SUPPORT ENFORCEMENT AGENCY OR the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state.

14-5-606. Procedure to contest validity or enforcement of registered support order. (a) A nonregistering party seeking to contest the validity or enforcement of a registered SUPPORT order in this state shall request a hearing within twenty days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-5-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered SUPPORT order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the
validity or enforcement of the registered SUPPORT order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

14-5-607. Contest of registration or enforcement. (a) A party contesting the validity or enforcement of a registered SUPPORT order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;
(2) The order was obtained by fraud;
(3) The order has been vacated, suspended, or modified by a later order;
(4) The issuing tribunal has stayed the order pending appeal;
(5) There is a defense under the law of this state to the remedy sought;
(6) Full or partial payment has been made;
(7) The statute of limitation under section 14-5-604 precludes enforcement of some or all of the alleged arrearages; or
(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of the registered SUPPORT order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered SUPPORT order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under
subsection (a) of this section to the validity or enforcement of the A REGISTERED SUPPORT order, the registering tribunal shall issue an order confirming the order.

14-5-608. Confirmed order. Confirmation of a registered SUPPORT order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

PART C. REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

14-5-609. Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in part A of this part 14-5-601 THROUGH 14-5-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

14-5-610. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered SUPPORT order may be modified only if the requirements of section 14-5-611 OR 14-5-613 OR 14-5-615 have been met.

14-5-611. Modification of child support order of another state. (a) If section 14-5-613 does not apply, except as otherwise provided in section 14-5-615, upon petition a tribunal of this state may modify a child support order issued in another state which order is registered in this state
if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of this state seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) This state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) Except as otherwise provided in section 14-5-615, a tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under section 14-5-207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the
duty of support established by that order precludes imposition of a further
obligation of support by a tribunal of this state.

(e) On issuance of an order by a tribunal of this state modifying
a child support order issued in another state, the tribunal of this state
becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subsections (a) through (e) of this
section and section 14-5-201 (b), a tribunal of this state retains
jurisdiction to modify an order issued by a tribunal of this state
if:

(1) One party resides in another state; and
(2) The other party resides outside the United States.

14-5-612. Recognition of order modified in another state. If a
child support order issued by a tribunal of this state is modified by a
tribunal of another state which assumed jurisdiction pursuant to the
"Uniform Interstate Family Support Act", a tribunal of this state:

(1) May enforce its order that was modified only as to arrears and
interest accruing before the modification;
(2) May provide appropriate relief for violations of its order which
occurred before the effective date of the modification; and
(3) Shall recognize the modifying order of the other state, upon
registration, for the purpose of enforcement.

(4) (Deleted by amendment, L. 2003, p. 1261, § 41, effective July
1, 2004.)

14-5-613. Jurisdiction to modify child support order of
another state when individual parties reside in this state. (a) If all of
the parties who are individuals reside in this state and the child does not
reside in the issuing state, a tribunal of this state has jurisdiction to
enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of parts 1 and 2 of this article, this part 6, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Parts 3, 4, 5, 7, and 8 of this article do not apply.

14-5-614. Notice to issuing tribunal of modification. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

PART D. REGISTRATION AND MODIFICATION OF FOREIGN CHILD SUPPORT ORDER

14-5-615. Jurisdiction to modify child support order of foreign country. (a) Except as otherwise provided in section 14-5-711, if a foreign country or political subdivision that is a state will not or may not lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual
pursuant to section 14-5-611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

14-5-616. Procedure to register child support order of foreign country for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under sections 14-5-601 through 14-5-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

SECTION 32. In Colorado Revised Statutes, repeal and reenact, with amendments, part 7 of article 5 of title 14 as follows:

PART 7

SUPPORT PROCEEDING UNDER CONVENTION

14-5-701. Definitions. In this part 7:

(1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) "Central authority" means the entity designated by the United States or a foreign country described in section 14-5-102 (3.3) (D) to perform the functions specified in the
1  CONVENTION.
2
3  (3) "CONVENTION SUPPORT ORDER" MEANS A SUPPORT ORDER OF
4  A TRIBUNAL OF A FOREIGN COUNTRY DESCRIBED IN SECTION 14-5-102 (3.3)
5  (D).
6
7  (4) "DIRECT REQUEST" MEANS A PETITION FILED BY AN INDIVIDUAL
8  IN A TRIBUNAL OF THIS STATE IN A PROCEEDING INVOLVING AN OBLIGEE,
9  OBLIGOR, OR CHILD RESIDING OUTSIDE THE UNITED STATES.
10
11  (5) "FOREIGN CENTRAL AUTHORITY" MEANS THE ENTITY
12  DESIGNATED BY A FOREIGN COUNTRY DESCRIBED IN SECTION 14-5-102
13  (3.3) (D) TO PERFORM THE FUNCTIONS SPECIFIED IN THE CONVENTION.
14
15  (6) "FOREIGN SUPPORT AGREEMENT":
16  (A) MEANS AN AGREEMENT FOR SUPPORT IN A RECORD THAT:
17  (i) IS ENFORCEABLE AS A SUPPORT ORDER IN THE COUNTRY OF
18  ORIGIN;
19  (ii) HAS BEEN:
20  (I) FORMALLY DRAWN UP OR REGISTERED AS AN AUTHENTIC
21  INSTRUMENT BY A FOREIGN TRIBUNAL; OR
22  (II) AUTHENTICATED BY, OR CONCLUDED, REGISTERED, OR FILED
23  WITH A FOREIGN TRIBUNAL; AND
24  (iii) MAY BE REVIEWED AND MODIFIED BY A FOREIGN TRIBUNAL;
25  AND
26  (B) INCLUDES A MAINTENANCE ARRANGEMENT OR AUTHENTIC
27  INSTRUMENT UNDER THE CONVENTION.
28
29  (7) "UNITED STATES CENTRAL AUTHORITY" MEANS THE
30  SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
31  SERVICES.
32
33  14-5-702. Applicability. This part 7 applies only to a support
proceeding under the Convention. In such a proceeding, if a provision of this Part 7 is inconsistent with Parts 1 through 6 of this article, this Part 7 controls.

14-5-703. Relationship of governmental entity to United States central authority. The governmental entity of this state is recognized as the agency designated by the United States central authority to perform specific functions under the Convention. <{what should be put in place of governmental entity? is it state department of human services? is it the support enforcement agency?}>

14-5-704. Initiation by [governmental entity] of support proceeding under Convention. (a) In a support proceeding under this Part 7, the governmental entity of this state shall:

(1) Transmit and receive applications; and

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) Recognition or recognition and enforcement of a foreign support order;

(2) Enforcement of a support order issued or recognized in this state;

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) Establishment of a support order if recognition of a foreign support order is refused under section 14-5-708 (2), (4), or
1.21.15

1 (9); 2 (5) MODIFICATION OF A SUPPORT ORDER OF A TRIBUNAL OF THIS STATE; AND 3 (6) MODIFICATION OF A SUPPORT ORDER OF A TRIBUNAL OF ANOTHER STATE OR A FOREIGN COUNTRY.

(c) THE FOLLOWING SUPPORT PROCEEDINGS ARE AVAILABLE UNDER THE CONVENTION TO AN OBLIGOR AGAINST WHICH THERE IS AN EXISTING SUPPORT ORDER:

(1) RECOGNITION OF AN ORDER SUSPENDING OR LIMITING ENFORCEMENT OF AN EXISTING SUPPORT ORDER OF A TRIBUNAL OF THIS STATE;

(2) MODIFICATION OF A SUPPORT ORDER OF A TRIBUNAL OF THIS STATE; AND

(3) MODIFICATION OF A SUPPORT ORDER OF A TRIBUNAL OF ANOTHER STATE OR A FOREIGN COUNTRY.

(d) A TRIBUNAL OF THIS STATE MAY NOT REQUIRE SECURITY, BOND, OR DEPOSIT, HOWEVER DESCRIBED, TO GUARANTEE THE PAYMENT OF COSTS AND EXPENSES IN PROCEEDINGS UNDER THE CONVENTION.

14-5-705. Direct request. (a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, sections 14-5-706 through 14-5-713 apply.

(c) In a direct request for recognition and enforcement of
A CONVENTION SUPPORT ORDER OR FOREIGN SUPPORT AGREEMENT:

(1) A SECURITY, BOND, OR DEPOSIT IS NOT REQUIRED TO GUARANTEE THE PAYMENT OF COSTS AND EXPENSES; AND

(2) AN OBLIGEE OR OBLIGOR THAT IN THE ISSUING COUNTRY HAS BENEFITTED FROM FREE LEGAL ASSISTANCE IS ENTITLED TO BENEFIT, AT LEAST TO THE SAME EXTENT, FROM ANY FREE LEGAL ASSISTANCE PROVIDED FOR BY THE LAW OF THIS STATE UNDER THE SAME CIRCUMSTANCES.

(d) A PETITIONER FILING A DIRECT REQUEST IS NOT ENTITLED TO ASSISTANCE FROM THE [GOVERNMENTAL ENTITY].

(e) THIS PART 7 DOES NOT PREVENT THE APPLICATION OF LAWS OF THIS STATE THAT PROVIDE SIMPLIFIED, MORE EXPEDITIOUS RULES REGARDING A DIRECT REQUEST FOR RECOGNITION AND ENFORCEMENT OF A FOREIGN SUPPORT ORDER OR FOREIGN SUPPORT AGREEMENT.

14-5-706. Registration of Convention support order. (a) Except as otherwise provided in this Part 7, a party who is an individual or that is a support enforcement agency seeking recognition of a Convention support order shall register the order in this State as provided in Part 6 of this Article.

(b) Notwithstanding sections 14-5-311 and 14-5-602 (a), a request for registration of a Convention support order must be accompanied by:

(1) A COMPLETE TEXT OF THE SUPPORT ORDER [OR AN ABSTRACT OR EXTRACT OF THE SUPPORT ORDER DRAWN UP BY THE ISSUING FOREIGN TRIBUNAL, WHICH MAY BE IN THE FORM RECOMMENDED BY THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW]; <{do you want the language in the bracket?}>
(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any, and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under section 14-5-707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.
14-5-707. Contest of registered Convention support order.

(a) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 7, SECTIONS 14-5-605 THROUGH 14-5-608 APPLY TO A CONTEST OF A REGISTERED CONVENTION SUPPORT ORDER.

(b) A PARTY CONTESTING A REGISTERED CONVENTION SUPPORT ORDER SHALL FILE A CONTEST NOT LATER THAN THIRTY DAYS AFTER NOTICE OF THE REGISTRATION, BUT IF THE CONTESTING PARTY DOES NOT RESIDE IN THE UNITED STATES, THE CONTEST MUST BE FILED NOT LATER THAN SIXTY DAYS AFTER NOTICE OF THE REGISTRATION.

(c) IF THE NONREGISTERING PARTY FAILS TO CONTEST THE REGISTERED CONVENTION SUPPORT ORDER BY THE TIME SPECIFIED IN SUBSECTION (b), THE ORDER IS ENFORCEABLE.

(d) A CONTEST OF A REGISTERED CONVENTION SUPPORT ORDER MAY BE BASED ONLY ON GROUNDS SET FORTH IN SECTION 14-5-708. THE CONTESTING PARTY BEARS THE BURDEN OF PROOF.

(e) IN A CONTEST OF A REGISTERED CONVENTION SUPPORT ORDER, A TRIBUNAL OF THIS STATE:

(1) IS BOUND BY THE FINDINGS OF FACT ON WHICH THE FOREIGN TRIBUNAL BASED ITS JURISDICTION; AND

(2) MAY NOT REVIEW THE MERITS OF THE ORDER.

(f) A TRIBUNAL OF THIS STATE DECIDING A CONTEST OF A REGISTERED CONVENTION SUPPORT ORDER SHALL PROMPTLY NOTIFY THE PARTIES OF ITS DECISION.

(g) A CHALLENGE OR APPEAL, IF ANY, DOES NOT STAY THE ENFORCEMENT OF A CONVENTION SUPPORT ORDER UNLESS THERE ARE EXCEPTIONAL CIRCUMSTANCES.
Convention support order. (a) Except as otherwise provided in subsection (b) of this section, a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

1. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

2. The issuing tribunal lacked personal jurisdiction consistent with section 14-5-201;

3. The order is not enforceable in the issuing country;

4. The order was obtained by fraud in connection with a matter of procedure;

5. A record transmitted in accordance with section 14-5-706 lacks authenticity or integrity;

6. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

7. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this article in this state;

8. Payment, to the extent alleged arrears have been paid in whole or in part;

9. In a case in which the respondent neither appeared nor
WAS REPRESENTED IN THE PROCEEDING IN THE ISSUING FOREIGN COUNTRY:

(A) IF THE LAW OF THAT COUNTRY PROVIDES FOR PRIOR NOTICE OF PROCEEDINGS, THE RESPONDENT DID NOT HAVE PROPER NOTICE OF THE PROCEEDINGS AND AN OPPORTUNITY TO BE HEARD; OR

(B) IF THE LAW OF THAT COUNTRY DOES NOT PROVIDE FOR PRIOR NOTICE OF THE PROCEEDINGS, THE RESPONDENT DID NOT HAVE PROPER NOTICE OF THE ORDER AND AN OPPORTUNITY TO BE HEARD IN A CHALLENGE OR APPEAL ON FACT OR LAW BEFORE A TRIBUNAL; OR

(10) THE ORDER WAS MADE IN VIOLATION OF SECTION 14-5-711.

(c) IF A TRIBUNAL OF THIS STATE DOES NOT RECOGNIZE A CONVENTION SUPPORT ORDER UNDER SUBSECTION (b) (2), (4), (6), OR (9) OF THIS SECTION:

(1) THE TRIBUNAL MAY NOT DISMISS THE PROCEEDING WITHOUT ALLOWING A REASONABLE TIME FOR A PARTY TO REQUEST THE ESTABLISHMENT OF A NEW CONVENTION SUPPORT ORDER; AND

(2) THE [GOVERNMENTAL ENTITY] SHALL TAKE ALL APPROPRIATE MEASURES TO REQUEST A CHILD SUPPORT ORDER FOR THE OBLIGEE IF THE APPLICATION FOR RECOGNITION AND ENFORCEMENT WAS RECEIVED UNDER SECTION 14-5-704.

14-5-709. Partial enforcement. IF A TRIBUNAL OF THIS STATE DOES NOT RECOGNIZE AND ENFORCE A CONVENTION SUPPORT ORDER IN ITS ENTIRETY, IT SHALL ENFORCE ANY SEVERABLE PART OF THE ORDER. AN APPLICATION OR DIRECT REQUEST MAY SEEK RECOGNITION AND PARTIAL ENFORCEMENT OF A CONVENTION SUPPORT ORDER.

14-5-710. Foreign support agreement. (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (c) AND (d) OF THIS SECTION, A TRIBUNAL OF THIS STATE SHALL RECOGNIZE AND ENFORCE A FOREIGN
SUPPORT AGREEMENT REGISTERED IN THIS STATE.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) A complete text of the foreign support agreement; and

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) The agreement was obtained by fraud or falsification;

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this article in this state; or

(4) The record submitted under subsection (b) of this section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a
TRIBUNAL OF ANOTHER STATE OR A FOREIGN COUNTRY.

14-5-711. Modification of Convention child support order. (a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, section 14-5-708 (c) applies.

14-5-712. Personal information - limit on use. Personal information gathered or transmitted under this part 7 may be used only for the purposes for which it was gathered or transmitted.

14-5-713. Record in original language - English. A record filed with a tribunal of this state under this part 7 must be in the original language and, if not in English, must be accompanied by an English translation.

SECTION 33. In Colorado Revised Statutes, recreate and reenact, with amendments, 14-5-902 as follows:

14-5-902. Transitional provision. This article, as amended by H.B. 15 - ____, applies to proceedings begun on or after the
EFFECTIVE DATE OF THIS ACT TO ESTABLISH A SUPPORT ORDER OR DETERMINE PARENTAGE OF A CHILD OR TO REGISTER, RECOGNIZE, ENFORCE, OR MODIFY A PRIOR SUPPORT ORDER, DETERMINATION, OR AGREEMENT, WHenever ISSUED OR ENTERED. <{is this considered an optional section? should it be in statute or dealt with in an effective date clause? see section 35 of the bill}> 

SECTION 34. In Colorado Revised Statutes, 2-5-102, add (13) as follows:

2-5-102. Inclusions - nonstatutory. (13) The revisor of statutes shall include in the publication of the "Uniform Interstate Family Support Act" as nonstatutory matter, following each amended or added section, the full text of the official comments to that section contained in the 2008 official text of the "Uniform Interstate Family Support Act" issued by the national conference of commissioners on uniform state laws, with any changes in the official comments to correspond to Colorado changes in the "Uniform Interstate Family Support Act". The comments shall be prepared by the revisor of statutes and approved for publication by the committee on legal services. <{do the sponsors want to have the official comments published in the statutes after each section? Currently, there are no official comments in the UIFSA statutes. do you want this to be in statute or nonstatutory?}> 

SECTION 35. Effective date. This act takes effect July 1, 2015. <{what should the effective date be?}> 

SECTION 36. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety. <{do you want a safety clause on the bill?}>
BILL TOPIC: "Uniform Act Fiduciary Access To Digital Assets"

A BILL FOR AN ACT

CONCERNING THE "COLORADO UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS 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://www.leg.state.co.us/billsummaries.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Fiduciary Access to Digital Assets Act", as amended, as Colorado law. The bill sets forth the conditions under which certain fiduciaries may access:

- The content of an electronic communication of a principal or decedent;
• A catalog of electronic communications sent or received by a decedent or principal; and
• Any other digital asset in which a principal has a right or interest or in which a decedent had a right or interest at death.

As to tangible personal property capable of receiving, storing, processing, or sending a digital asset, a fiduciary with authority over the property of a decedent, protected person, principal, or settlor may access the property and any digital asset stored in it and is an authorized user for purposes of computer fraud and unauthorized computer access laws. "Fiduciary" means a personal representative, a conservator, an agent, or a trustee.

A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good-faith compliance with the provisions of the bill.

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

SECTION 1. In Colorado Revised Statutes, add part 15 to article 1 of title 15 as follows:

PART 15

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

15-1-1501. Short title. This part 15 shall be known and may be cited as the "COLORADO UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT".

15-1-1502. Definitions. As used in this part 15, unless the context requires otherwise:

(1) "ACCOUNT HOLDER" means a person who has entered into a terms-of-service agreement with a custodian or a fiduciary for the person.

(2) "AGENT" means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) "CARRIES" means engages in the transmission of
ELECTRONIC COMMUNICATIONS.

(4) "Catalogue of electronic communications" means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.

(6) "Content of an electronic communication" means information concerning the substance or meaning of a communication that:

(a) Has been sent or received by an account holder;

(b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(c) Is not readily accessible to the public.

(7) "Court" means a district court or the probate court for the city and county of Denver.

(8) "Custodian" means a person who carries, maintains, processes, receives, or stores a digital asset of an account holder.

(9) "Digital asset" means a record that is electronic. The term does not include an underlying asset or liability unless the asset or liability is itself a record that is electronic.

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
1. Electromagnetic, or similar capabilities.

(11) "Electronic communication" has the same meaning as set forth in 18 U.S.C. sec. 2510 (12), as amended.

(12) "Electronic communication service" means a custodian that provides to an account holder the ability to send or receive an electronic communication.

(13) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent, or trustee.

(14) "Governing instrument" means a will, trust, instrument creating a power of attorney, or other dispositive or nominative instrument.

(15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under the laws of this state.

(18) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

(19) "Principal" means an individual who grants authority to an agent in a power of attorney.

(20) "Protected person" means an individual for whom a
CONSERVATOR HAS BEEN APPOINTED. THE TERM INCLUDES AN INDIVIDUAL FOR WHOM AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR IS PENDING.

(21) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) "Remote computing service" means a custodian that provides to an account holder computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Sec. 2510 (14), as amended.

(23) "Terms-of-service agreement" means an agreement that controls the relationship between an account holder and a custodian.

(24) "Trustee" means a fiduciary with legal title to property pursuant to an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

(25) "Will" includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

15-1-1503. Applicability. (1) This part 15 applies to:

(a) A fiduciary or agent acting under a will or power of attorney executed before, on, or after the effective date of this part 15;

(b) A personal representative acting for a decedent who died before, on, or after the effective date of this part 15;
(c) A conservatorship proceeding, whether pending in a court or commenced before, on, or after the effective date of this Part 15; and

(d) A trustee acting under a trust created before, on, or after the effective date of this Part 15.

(2) This Part 15 does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

15-1-1504. Access by personal representative to digital asset of decedent. (1) Subject to section 15-1-1508 (2), and unless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent has the right to access:

(a) The content of an electronic communication that the custodian is permitted to disclose under the "Electronic Communications Privacy Act", 18 U.S.C. sec. 2702(b), as amended;

(b) Any catalog of electronic communications sent or received by the decedent; and

(c) Any other digital asset in which the decedent had a right or interest at death.

15-1-1505. Access by conservator to digital asset of protected person. (1) Subject to section 15-1-1508 (2), the court, after an opportunity for hearing under Article 14 or 14.5 of this title, may grant a conservator the right to access:

(a) The content of an electronic communication that the custodian is permitted to disclose under the "Electronic Communications Privacy Act", 18 U.S.C. sec. 2702(b), as amended;
(b) ANY CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE PROTECTED PERSON; AND

(c) ANY OTHER DIGITAL ASSET IN WHICH THE PROTECTED PERSON HAS A RIGHT OR INTEREST.

15-1-1506. Access by agent to digital asset of principal. (1) To the extent a power of attorney expressly grants an agent authority over the content of an electronic communication of the principal, and except as described in section 15-1-1508 (2), the agent has the right to access the content of an electronic communication that the custodian is permitted to disclose under the "Electronic Communications Privacy Act", 18 U.S.C. sec. 2702(b), as amended.

(2) Except as described in section 15-1-1508 (2), and unless otherwise ordered by the court or provided by a power of attorney, an agent has the right to access:

(a) ANY CATALOG OF ELECTRONIC COMMUNICATIONS SENT OR RECEIVED BY THE PRINCIPAL; AND

(b) ANY OTHER DIGITAL ASSET IN WHICH THE PRINCIPAL HAS A RIGHT OR INTEREST.

15-1-1507. Access by trustee to digital asset. (1) Except as described in section 15-1-1508 (2), and unless otherwise ordered by the court or provided in a trust, a trustee that is an original account holder has the right to access any digital asset held in trust, including any catalog of electronic communications of the trustee and the content of an electronic communication.

(2) Except as described in section 15-1-1508 (2), and unless otherwise ordered by the court or provided in a trust, a trustee
1.22.15

THAT IS NOT AN ORIGINAL ACCOUNT HOLDER HAS THE RIGHT TO ACCESS:

(a) THE CONTENT OF AN ELECTRONIC COMMUNICATION THAT THE
custodian IS PERMITTED TO DISCLOSE UNDER THE "ELECTRONIC
COMMUNICATIONS PRIVACY ACT", 18 U.S.C. sec. 2702(b), AS AMENDED;

(b) ANY CATALOG OF ELECTRONIC COMMUNICATIONS SENT OR
RECEIVED BY THE ORIGINAL OR ANY SUCCESSOR ACCOUNT HOLDER; AND

(c) ANY OTHER DIGITAL ASSET IN WHICH THE ORIGINAL OR ANY
SUCCESSOR ACCOUNT HOLDER HAS A RIGHT OR INTEREST.

15-1-1508. Fiduciary authority. (1) A FIDUCIARY THAT IS AN
ACCOUNT HOLDER OR THAT HAS THE RIGHT UNDER THIS PART 15 TO
ACCESS A DIGITAL ASSET OF AN ACCOUNT HOLDER:

(a) EXCEPT AS OTHERWISE PROVIDED BY A TERMS-OF-SERVICE
AGREEMENT, COPYRIGHT LAW, AND OTHER APPLICABLE LAW, MAY TAKE
ANY ACTION CONCERNING THE ASSET TO THE EXTENT OF THE ACCOUNT
HOLDER'S AUTHORITY AND THE FIDUCIARY'S POWER UNDER THE LAW OF
THIS STATE;

(b) HAS, FOR THE PURPOSE OF APPLICABLE ELECTRONIC PRIVACY
LAWS, THE LAWFUL CONSENT OF THE ACCOUNT HOLDER FOR THE
CUSTODIAN TO DIVULGE THE CONTENT OF AN ELECTRONIC
COMMUNICATION TO THE FIDUCIARY; AND

(c) IS, FOR THE PURPOSES OF ANY APPLICABLE COMPUTER FRAUD
AND UNAUTHORIZED COMPUTER ACCESS LAWS, INCLUDING ARTICLE 5.5 OF
TITLE 18, C.R.S., AN AUTHORIZED USER.

(2) UNLESS AN ACCOUNT HOLDER AGREES AFTER THE EFFECTIVE
DATE OF THIS PART 15 TO A PROVISION IN A TERMS-OF-SERVICE
AGREEMENT THAT LIMITS A FIDUCIARY'S ACCESS TO A DIGITAL ASSET OF
THE ACCOUNT HOLDER BY AN AFFIRMATIVE ACT SEPARATE FROM THE
ACCOUNT HOLDER'S ASSENT TO OTHER PROVISIONS OF THE AGREEMENT:

(a) The provision is void as contrary to the strong public policy of this state; and

(b) The fiduciary's access under this part 15 to a digital asset does not violate the terms-of-service agreement even if the agreement requires notice of a change in the account holder's status.

(3) A choice-of-law provision in a terms-of-service agreement is unenforceable against a fiduciary acting under this part 15 to the extent the provision designates law that enforces a limitation on a fiduciary's access to a digital asset, and the limitation is void under subsection (2) of this section.

(4) As to tangible personal property capable of receiving, storing, processing, or sending a digital asset, a fiduciary with authority over the property of a decedent, protected person, principal, or settlor:

(a) has the right to access the property and any digital asset stored in it; and

(b) is an authorized user for purposes of any applicable computer fraud and unauthorized computer access laws, including article 5.5 of Title 18, C.R.S.

15-1-1509. Compliance. (1) If a fiduciary with a right under this part 15 to access a digital asset of an account holder complies with subsection (2) of this section, the custodian shall comply with the fiduciary's request in a record for:

(a) access to the asset;

(b) control of the asset; and
(c) A copy of the asset to the extent permitted by copyright law.

(2) (a) If a request under subsection (1) of this section is made by a personal representative with the right of access under section 15-1-1504, the request must be accompanied by:

(I) A certified copy of the letter of appointment of the representative; or

(II) A small-estate affidavit or court order.

(b) If a request under subsection (1) of this section is made by a conservator with the right of access under section 15-1-1505, the request must be accompanied by a certified copy of the court order that gives the conservator authority over the digital asset.

(c) If a request under subsection (1) of this section is made by an agent with the right of access under section 15-1-1506, the request must be accompanied by an original or a copy of the power of attorney that authorizes the agent to exercise authority over the digital asset and a certification of the agent, under penalty of perjury, that the power of attorney is in effect.

(d) If a request under subsection (1) of this section is made by a trustee with the right of access under section 15-1-1507, the request must be accompanied by a certified copy of the trust instrument.

(3) A custodian shall comply with a request made under subsection (1) of this section not later than sixty days after receipt. If the custodian fails to comply, the fiduciary may apply
TO THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

(4) As described in paragraph (d) of subsection (2) of this section, instead of furnishing a copy of the trust instrument, a trustee may provide a certification of trust. The certification:

(a) must contain the following information:

(I) a statement that the trust exists and the date the trust instrument was executed;

(II) the identity of the settlor;

(III) the identity and address of the trustee;

(IV) a statement that there is nothing inconsistent in the trust with respect to the trustee's powers over digital assets;

(V) a statement indicating whether the trust is revocable and, if so, the identity of any person holding a power to revoke the trust;

(VI) a statement indicating whether a cotrustee has authority to sign or otherwise authenticate; and

(VII) a statement indicating whether all or fewer than all cotrustees are required to exercise powers of the trustee;

(b) must be signed or otherwise authenticated by a trustee;

(c) must state that the trust has not been revoked, modified, or amended in a manner that would cause the representations contained in the certification of trust to be incorrect; and

(d) need not contain the dispositive terms of the trust.

(5) A custodian that receives a certification under subsection (4) of this section may require the trustee to provide
COPIES OF EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER AMENDMENTS DESIGNATING THE TRUSTEE AND CONFERRING ON THE TRUSTEE THE POWER TO ACT IN THE PENDING TRANSACTION.

(6) A CUSTODIAN THAT ACTS IN RELIANCE ON A CERTIFICATION PROVIDED UNDER SUBSECTION (4) OF THIS SECTION WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED IN IT ARE INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT INQUIRY THE EXISTENCE OF FACTS STATED IN THE CERTIFICATION.

(7) A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE ON A CERTIFICATION PROVIDED UNDER SUBSECTION (4) OF THIS SECTION MAY ENFORCE THE TRANSACTION AGAINST THE TRUST PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE CORRECT.

(8) A PERSON WHO DEMANDS THE TRUST INSTRUMENT IN ADDITION TO A CERTIFICATION PROVIDED UNDER SUBSECTION (4) OF THIS SECTION OR EXCERPTS PROVIDED UNDER SUBSECTION (5) OF THIS SECTION IS LIABLE FOR DAMAGES, INCLUDING ATTORNEYS' FEES, IF THE COURT DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE INSTRUMENT.

(9) THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY OF A TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.

15-1-1510. Custodian immunity. A CUSTODIAN AND ITS OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE FROM LIABILITY FOR AN ACT OR OMISSION DONE IN GOOD FAITH IN COMPLIANCE WITH THIS PART 15.

15-1-1511. Uniformity of application and construction. In
APPLYING AND CONSTRUING THIS UNIFORM ACT, COURTS SHALL GIVE
CONSIDERATION TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

15-1-1512. Relation to "Electronic Signatures in Global and
National Commerce Act". This part 15 modifies, limits, or
supersedes the "Electronic Signatures in Global and National
Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify,
limit, or supersede section 101 (c) of that act, 15 U.S.C. sec.
7001(c), or authorize electronic delivery of any of the notices
described in section 103 (b) of that act, 15 U.S.C. sec. 7003(b).

15-1-1513. Severability. If any provision of this part 15 or
its application to any person or circumstance is held invalid, the
invalidity does not affect other provisions or applications of
this part 15 which can be given effect without the invalid
provision or application, and to this end the provisions of this
part 15 are severable.

SECTION 2. In Colorado Revised Statutes, 2-5-102, add (13) as
follows:

2-5-102. Inclusions - nonstatutory. (13) The revisor of
statutes shall include in the publication of the "Colorado
Uniform Fiduciary Access to Digital Assets Act", as
nonstatutory matter, following each section of the article, the
full text of the official comments to that section contained in
the official volume containing the 2014 official text of the
"Uniform Fiduciary Access to Digital Assets Act" issued by the
national conference of commissioners on uniform state laws,
with any changes in the official comments or Colorado
COMMENTS TO CORRESPOND TO COLORADO CHANGES IN THE UNIFORM ACT. THE REVISOR OF STATUTES SHALL PREPARE THE COMMENTS AND APPROVE THEM FOR PUBLICATION BY THE COMMITTEE ON LEGAL SERVICES.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Substitute Decision-making Docs Act"

A BILL FOR AN ACT

CONCERNING THE "COLORADO UNIFORM SUBSTITUTE DECISION-MAKING DOCUMENTS 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://www.leg.state.co.us/billsummaries.)

Colorado Commission on Uniform State Laws. The bill adopts, with amendments, the "Uniform Substitute Decision-making Documents Act" as Colorado law.

The bill establishes the circumstances under which a substitute decision-making document (document) executed outside this state is valid in this state. A person may assume in good faith that a document is

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
genuine, valid, and still in effect and that the decision-maker's authority is genuine, valid, and still in effect.

A person who is asked to accept a document shall do so within a reasonable amount of time. The person may not require an additional or different form of document for authority granted in the document presented. A person who refuses to accept a substitute document is subject to:

- A court order mandating acceptance of the document; and
- Liability for reasonable attorney's fees and costs incurred in an action or proceeding that mandates acceptance of the document.

A person is not required to accept a substitute document under certain described conditions.

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

SECTION 1. In Colorado Revised Statutes, add article 23 to title 15 as follows:

<\{Does this new Act belong under an existing article of the Probate Code (i.e., articles 10-17 of title 15)? If so, where? For now, I am placing it outside the probate code as a new article 23 under title 15.\}>

ARTICLE 23

Substitute Decision-making Documents

15-23-101. Short title. This article shall be known and may be cited as the "Colorado Uniform Recognition of Substitute Decision-making Documents Act".

15-23-102. Definitions. As used in this article, unless the context requires otherwise:

(1) "Decision-maker" means a person authorized to act for an individual under a substitute decision-making document, whether denominated a decision-maker, agent, attorney-in-fact, proxy, or representative, or by another title. The term includes
AN ORIGINAL DECISION-MAKER, A CO-DECISION-MAKER, A SUCCESSOR
DECISION-MAKER, AND A PERSON TO WHOM A DECISION-MAKER’S
AUTHORITY IS DELEGATED.

(2) "Good faith" means honesty in fact.

(3) "Health care" means a service or procedure to
maintain, diagnose, treat, or otherwise affect an individual’s
physical or mental condition.

(4) "Person" means an individual, estate, business or
nonprofit entity, public corporation, government or
governmental subdivision, agency, or instrumentality, or other
legal entity.

(5) "Personal care" means an arrangement or service to
provide an individual shelter, food, clothing, transportation,
education, recreation, social contact, or assistance with the
activities of daily living.

(6) "Property" means anything that may be subject to
ownership, whether real or personal or legal or equitable, or
any interest or right therein.

(7) "Record" means information that is inscribed on a
tangible medium or that is stored in an electronic or other
medium and is retrievable in perceivable form.

(8) "Substitute decision-making document" means a record
created by an individual to authorize a decision-maker to act
for the individual with respect to property, health care, or
personal care.


(1) A substitute decision-making document for property
EXECUTED OUTSIDE THIS STATE IS VALID IN THIS STATE IF, WHEN THE
DOCUMENT WAS EXECUTED, THE EXECUTION COMPLIED WITH THE LAW OF
THE JURISDICTION INDICATED IN THE DOCUMENT OR, IF NO JURISDICTION
IS INDICATED, THE LAW OF THE JURISDICTION IN WHICH THE DOCUMENT
WAS EXECUTED.

(2) A SUBSTITUTE DECISION-MAKING DOCUMENT FOR HEALTH
CARE OR PERSONAL CARE EXECUTED OUTSIDE THIS STATE IS VALID IN THIS
STATE IF, WHEN THE DOCUMENT WAS EXECUTED, THE EXECUTION
COMPLIED WITH:

(a) THE LAW OF THE JURISDICTION INDICATED IN THE DOCUMENT
OR, IF NO JURISDICTION IS INDICATED, THE LAW OF THE JURISDICTION IN
WHICH THE DOCUMENT WAS EXECUTED; OR

(b) THE LAW OF THIS STATE.

(3) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PHOTOCOPY OR
ELECTRONICALLY TRANSMITTED COPY OF AN ORIGINAL SUBSTITUTE
DECISION-MAKING DOCUMENT HAS THE SAME EFFECT AS THE ORIGINAL.

15-23-104. Meaning and effect of substitute decision-making
document. The meaning and effect of a substitute
decision-making document and the authority of the
decision-maker are determined by the law of the jurisdiction
indicated in the document or, if no jurisdiction is indicated, the
law of the jurisdiction in which the document was executed.

(1) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON WHO IN GOOD
FAITH ACCEPTS A SUBSTITUTE DECISION-MAKING DOCUMENT WITHOUT
ACTUAL KNOWLEDGE THAT THE DOCUMENT IS VOID, INVALID, OR
TERMINATED, OR THAT THE AUTHORITY OF THE PURPORTED
DECISION-MAKER IS VOID, INVALID, OR TERMINATED, MAY ASSUME
WITHOUT INQUIRY THAT THE DOCUMENT IS GENUINE, VALID, AND STILL IN
EFFECT AND THAT THE DECISION-MAKER'S AUTHORITY IS GENUINE, VALID,
AND STILL IN EFFECT.

(2) A PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE
DECISION-MAKING DOCUMENT MAY REQUEST AND WITHOUT FURTHER
INVESTIGATION RELY ON:

(a) THE DECISION-MAKER'S ASSERTION OF A FACT CONCERNING
THE INDIVIDUAL FOR WHOM A DECISION WILL BE MADE, THE
DECISION-MAKER, OR THE DOCUMENT;

(b) A TRANSLATION OF THE DOCUMENT IF THE DOCUMENT
CONTAINS, IN WHOLE OR IN PART, LANGUAGE OTHER THAN ENGLISH; AND

(c) AN OPINION OF COUNSEL REGARDING ANY MATTER OF LAW
CONCERNING THE DOCUMENT IF THE PERSON PROVIDES IN A RECORD THE
REASON FOR THE REQUEST.

15-23-106. Obligation to accept substitute decision-making
document. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
THIS SECTION OR BY ANOTHER LAW OF THIS STATE, A PERSON WHO IS
ASKED TO ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT SHALL
ACCEPT WITHIN A REASONABLE TIME A DOCUMENT THAT PURPORTEDLY
MEETS THE VALIDITY REQUIREMENTS OF SECTION 15-23-103. THE PERSON
MAY NOT REQUIRE AN ADDITIONAL OR DIFFERENT FORM OF DOCUMENT FOR
AUTHORITY GRANTED IN THE DOCUMENT PRESENTED.

(2) A PERSON WHO IS ASKED TO ACCEPT A SUBSTITUTE
DECISION-MAKING DOCUMENT IS NOT REQUIRED TO ACCEPT THE
DOCUMENT IF:

(a) THE PERSON OTHERWISE WOULD NOT BE REQUIRED IN THE
SAME CIRCUMSTANCES TO ACT IF REQUESTED BY THE INDIVIDUAL WHO
EXECUTED THE DOCUMENT;

(b) The person has actual knowledge of the termination
of the decision-maker's authority or the document;

(c) The person's request under section 15-23-105 (2) for the
decision-maker's assertion of fact, a translation, or an opinion
of counsel is refused;

(d) The person in good faith believes that the document is
not valid or the decision-maker does not have the authority to
request a particular transaction or action; or

(e) The person makes, or has actual knowledge that
another person has made, a report to a law enforcement agency
or to a county department of social services stating a belief
that the individual for whom a decision will be made may be
subject to abuse, neglect, exploitation, or abandonment by the
decision-maker or a person acting for or with the
decision-maker.

(3) A person who, in violation of this section, refuses to
accept a substitute decision-making document is subject to:

(a) A court order mandating acceptance of the document;

AND

(b) Liability for reasonable attorney's fees and costs
incurred in an action or proceeding that mandates acceptance
of the document.

15-23-107. Remedies under other law. The remedies under
this article are not exclusive and do not abrogate any other
right or remedy available under the law of this state.
15-23-108. Uniformity of application and construction. In applying and construing this uniform act, courts shall give consideration to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

15-23-109. Relation to the "Electronic Signatures in Global and National Commerce Act". This article modifies, limits, or supersedes the "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersedes section 101 (c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

15-23-110. Applicability. This article applies to a substitute decision-making document created before, on, or after the effective date of this article.

SECTION 2. In Colorado Revised Statutes, 2-5-102, add (13) as follows:

2-5-102. Inclusions - nonstatutory. (13) The revisor of statutes shall include in the publication of the "Colorado Uniform Recognition of Substitute Decision-making Documents Act", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the 2014 official text of the "Uniform Recognition of Substitute Decision-making Documents Act" issued by the National Conference of Commissioners on Uniform State Laws, with any changes in the official comments or Colorado comments to correspond to
COLORADO CHANGES IN THE UNIFORM ACT. THE REVISOR OF STATUTES SHALL PREPARE THE COMMENTS AND APPROVE THEM FOR PUBLICATION BY THE COMMITTEE ON LEGAL SERVICES.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
Colorado Commission on Uniform State Laws

BILL TOPIC: "Colorado Uniform Voidable Transactions Act"

A BILL FOR AN ACT

CONCERNING THE ENACTMENT OF AMENDMENTS TO THE "COLORADO UNIFORM FRAUDULENT TRANSFER ACT" RECOMMENDED BY THE UNIFORM LAW COMMISSION, AND, IN CONNECTION THEREWITH, CHANGING THE NAME OF THE "COLORADO UNIFORM FRAUDULENT TRANSFER ACT" TO THE "COLORADO UNIFORM 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://www.leg.state.co.us/billsummaries.)

Colorado Commission on Uniform State Laws. In 2014 the
Uniform Law Commission approved a set of amendments to the "Uniform Fraudulent Transfer Act" (act). The amendments changed the title of the act to the "Uniform Voidable Transactions Act". The amendment project was instituted to address a small number of narrowly defined issues and was not a comprehensive revision. The principal features of the amendments are:

- **Choice of law.** The amendments add a new provision that sets forth a choice of law rule applicable to claims for relief of the nature governed by the act.

- **Evidentiary matters.** New provisions add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims for relief and defenses under the act.

- **Deletion of the special definition of “insolvency” for partnerships.** The act as originally written set forth a special definition of "insolvency" applicable to partnerships. The amendments delete the original language, with the result that the general definition of insolvency now applies to partnerships. One reason for this change is that the original provision gave a partnership full credit for the net worth of each of its general partners. That makes sense only if each general partner is liable for all debts of the partnership, but such is not necessarily the case under modern partnership statutes. A more fundamental reason is that the general definition of insolvency does not credit a nonpartnership debtor with any part of the net worth of its guarantors. To the extent that a general partner is liable for the debts of the partnership, that liability is analogous to that of a guarantor. There is no good reason to define insolvency differently for a partnership debtor than for a nonpartnership debtor whose debts are guaranteed by contract.

- **Defenses.** The amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee, as follows:
  - As originally written, the act created a complete defense to an action for a fraudulent transfer (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to the act the further requirement that the reasonably equivalent value must be given to the debtor.
  - The act created, in a provision derived from the
federal "Bankruptcy Code", a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from a person. The amendments clarify the meaning of the defense by rewording it to follow more closely the wording of the federal "Bankruptcy Code", which is substantially unchanged as of 2014. Among other things, the amendments make clear that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for a money judgment.

• The act as originally written created a defense to an action for a fraudulent transfer or to avoid a transfer if the transfer results from enforcement of a security interest in compliance with the secured transactions provisions of the "Uniform Commercial Code". The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").

• **Series organizations.** A new provision of the act provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the act, even if it is not treated as a person for other purposes. This change responds to the emergence of the series organization as a significant form of business organization.

• **Medium neutrality.** In order to accommodate modern technology, the references in the act to a "writing" have been replaced with "record" and related changes made.

• **Style.** The amendments make a number of stylistic changes that are not intended to change the meaning of the act. For example, the amended act consistently uses the word "voidable" to denote a transfer or obligation for which the act provides a remedy. As originally written, the act sometimes inconsistently used the word "fraudulent". No change in meaning is intended. Likewise, the retitling of the act is not intended to change its meaning.

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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
38-8-101. Short title. This article, shall be known and may be
which was formerly cited as the "Colorado Uniform Fraudulent
Transfer Act", IS KNOWN AND MAY BE CITED AS THE "COLORADO
UNIFORM VOIDABLE TRANSACTIONS ACT".

SECTION 2. In Colorado Revised Statutes, 38-8-102, amend (1)
(a) introductory portion, (1) (a) (II), (1) (b) introductory portion, (1) (b)
(I), (1) (d), (3), and (10); and add (7.5), (9.5), (11.5), and (12.5) as
follows:

38-8-102. Definitions. As used in this article, 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;

(b) A corporation, twenty percent or more of whose outstanding
voting securities are directly or indirectly owned, controlled, or held with
power to vote, by the debtor or 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:

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

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

(3) "Claim", except as used in "Claim for Relief", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(7.5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9.5) "Organization" means a person other than an individual.

(10) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(11.5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12.5) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

SECTION 3. In Colorado Revised Statutes, 38-8-103, amend (1) and (2); and repeal (3) as follows:

38-8-103. Insolvency. (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than all the sum of the debtor's assets, at a fair valuation.
(2) A debtor who is generally not paying his debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) A partnership is insolvent under subsection (1) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

SECTION 4. In Colorado Revised Statutes, 38-8-104, amend (2) as follows:

38-8-104. Value. (2) For the purposes of sections 38-8-105, 38-8-105 (1) (b) and 38-8-106, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive sale, foreclosing on assets subject to a lien, or pursuant to the execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

SECTION 5. In Colorado Revised Statutes, 38-8-105, amend (1) introductory portion, (1) (b) (II), and (2) (k); and add (3) as follows:

38-8-105. Transfer or obligation voidable as to present or future creditor. (1) A transfer made or obligation incurred by a debtor is fraudulent voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

   (II) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond his ability to pay as they became due.

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

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

(3) A creditor making a claim for relief under subsection (1) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 6. In Colorado Revised Statutes, amend 38-8-106 as follows:

38-8-106. Transfer or obligation voidable as to present creditor. (1) A transfer made or obligation incurred by a debtor is fraudulent voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

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

(3) SUBJECT TO SECTION 38-8-103 (2), A CREDITOR MAKING A CLAIM FOR RELIEF UNDER SUBSECTION (1) OR (2) OF THIS SECTION HAS THE BURDEN OF PROVING THE ELEMENTS OF THE CLAIM FOR RELIEF BY A PREPONDERANCE OF THE EVIDENCE.

SECTION 7. In Colorado Revised Statutes, 38-8-107, amend (1) (a) (I), (4), and (5) (b) as follows:

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

(1) For the purposes of this article:

(a) A transfer is made:

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

(4) A transfer is not made until the debtor has acquired rights in the asset transferred; AND

(5) An obligation is incurred:

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

SECTION 8. In Colorado Revised Statutes, 38-8-108, amend (1) (b) and (1) (c) as follows:

38-8-108. Remedies of creditor. (1) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in section 38-8-109, may obtain:
(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by the Colorado rules of civil procedure if available under applicable law;

(c) With respect to a transfer made or obligation incurred that is fraudulent voidable under section 38-8-105 (1) (a), a judgment for one and one-half the value of the asset transferred or for one and one-half the amount necessary to satisfy the creditor's claim, whichever is less, together with the creditor's actual costs; except that any judgment entered against a person under this paragraph (c) is in lieu of, not in addition to, a judgment against the same person under section 38-8-109 (2). No judgment may be entered pursuant to this paragraph (c) against a person other than the debtor unless that person also acts with wrongful intent as defined in section 38-8-105 (1) (a); otherwise, judgment for money damages against a person other than the debtor may be entered only as provided in section 38-8-109. No judgment may be entered under this paragraph (c) unless a court of competent jurisdiction enters or has entered a judgment or order establishing the validity of the creditor's claim against the debtor.

SECTION 9. In Colorado Revised Statutes, 38-8-109, amend (1), (2), (4) (a), (4) (b), (5) (b), and (6) (a); and add (7) and (8) as follows:

38-8-109. Defenses, liability, and protection of transferee or obligee. (1) A transfer or obligation is not voidable under section 38-8-105 (1) (a) against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a
CREDITOR UNDER SECTION 38-8-108 (1) (a), THE FOLLOWING RULES APPLY:

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

  (a) (I) The first transferee of the asset or the person for whose benefit the transfer was made; or
  (b) (II) Any subsequent transferee, other than:

   (I) (A) good-faith transferee or obligee that took for value;
   or from any subsequent transferee or obligee.

   (II) (B) An immediate or mediate good-faith transferee of a person described in sub-subparagraph (a) of this subparagraph (II).

(b) Recovery pursuant to section 38-8-108 (1) (A) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subparagraph (I) or (II) of paragraph (a) of this subsection (1).

(4) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

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

(b) Enforcement of any obligation incurred; or

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

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

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

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

(7) THE FOLLOWING RULES DETERMINE THE BURDEN OF PROVING MATTERS REFERRED TO IN THIS SECTION:

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

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

(c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE APPLICABILITY TO THE TRANSFEREE OF SUB-SUBPARAGRAPHS (A) OR (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SECTION.

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

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

SECTION 10. In Colorado Revised Statutes, amend 38-8-110 as follows:

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

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

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

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

5 SECTION 11. In Colorado Revised Statutes, add 38-8-110.3, 38-8-110.5, and 38-8-113 as follows:

6 38-8-110.3. Governing law. (1) In this section, the following rules determine a debtor's location:

7 (a) A debtor who is an individual is located at the individual's principal residence.

8 (b) A debtor that is an organization and has only one place of business is located at its place of business.

9 (c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

10 (2) A claim for relief in the nature of a claim for relief under this article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

11 38-8-110.5. Application to series organizations - definitions.

12 (1) In this section:
(a) "PROTECTED SERIES" MEANS AN ARRANGEMENT, HOWEVER
DENOMINATED, CREATED BY A SERIES ORGANIZATION THAT, PURSUANT TO
THE LAW UNDER WHICH THE SERIES ORGANIZATION IS ORGANIZED, HAS
THE CHARACTERISTICS SET FORTH IN SUBSECTION (12.3) OF THIS SECTION.
(b) "SERIES ORGANIZATION" MEANS AN ORGANIZATION THAT,
PURSUANT TO THE LAW UNDER WHICH IT IS ORGANIZED, HAS THE
FOLLOWING CHARACTERISTICS:
   (I) THE ORGANIC RECORD OF THE ORGANIZATION PROVIDES FOR
CREATION BY THE ORGANIZATION OF ONE OR MORE PROTECTED SERIES,
HOWEVER DENOMINATED, WITH RESPECT TO SPECIFIED PROPERTY OF THE
ORGANIZATION, AND FOR RECORDS TO BE MAINTAINED FOR EACH
PROTECTED SERIES THAT IDENTIFY THE PROPERTY OF OR ASSOCIATED WITH
THE PROTECTED SERIES.
   (II) DEBT INCURRED OR EXISTING WITH RESPECT TO THE
ACTIVITIES OF, PROPERTY OF, OR ASSOCIATED WITH, A PARTICULAR
PROTECTED SERIES IS ENFORCEABLE AGAINST THE PROPERTY OF, OR
ASSOCIATED WITH, THE PROTECTED SERIES ONLY AND NOT AGAINST THE
PROPERTY OF, OR ASSOCIATED WITH, THE ORGANIZATION OR OTHER
PROTECTED SERIES OF THE ORGANIZATION.
   (III) DEBT INCURRED OR EXISTING WITH RESPECT TO THE
ACTIVITIES OR PROPERTY OF THE ORGANIZATION IS ENFORCEABLE AGAINST
THE PROPERTY OF THE ORGANIZATION ONLY AND NOT AGAINST THE
PROPERTY OF, OR ASSOCIATED WITH A PROTECTED SERIES, OF THE
ORGANIZATION. A SERIES ORGANIZATION AND EACH PROTECTED SERIES OF
THE ORGANIZATION IS A SEPARATE PERSON FOR PURPOSES OF THIS
ARTICLE, EVEN IF FOR OTHER PURPOSES A PROTECTED SERIES IS NOT A
PERSON SEPARATE FROM THE ORGANIZATION OR OTHER PROTECTED SERIES.
OF THE ORGANIZATION.

(2) A SERIES ORGANIZATION AND EACH PROTECTED SERIES OF THE ORGANIZATION IS A SEPARATE PERSON FOR PURPOSES OF THIS ARTICLE, EVEN IF FOR PURPOSES A PROTECTED SERIES IS NOT A PERSON SEPARATE FROM THE ORGANIZATION OR OTHER PROTECTED SERIES OF THE ORGANIZATION.

38-8-113. Relation to electronic signatures in federal "Electronic Signatures in Global and National Commerce Act". This article modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

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

2-5-102. Inclusions - nonstatutory. (7) There shall be included in the publication of the "Colorado Uniform Fraudulent Transfer Act" "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT", as nonstatutory matter, following each section of the article, the full text of the official comments to that section contained in the official volume containing the 1984 official text of the "Uniform Fraudulent Transfer Act" "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT" issued by the national conference of commissioners on uniform state laws, including changes to the official comments made by the 2014 amendments to the uniform act, with any changes in the official comments or Colorado comments to correspond to Colorado changes in the uniform act. The
comments shall be prepared by the revisor of statutes and approved for
publication by the committee on legal services.

SECTION 13. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2016 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.
BILL TOPIC: "Uniform Law On Liens For Common Interest HOA Dues"

DEADLINES: File by: 1/28/2015

A BILL FOR AN ACT

CONCERNING THE LIEN FOR ASSESSMENTS OF A UNIT OWNERS' ASSOCIATION UNDER THE "COLORADO COMMON INTEREST OWNERSHIP 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://www.leg.state.co.us/billsummaries.)

The bill replaces the current statute governing the imposition and enforcement of a lien for common expense assessments of a common interest community with the current standard language recommended by the Commission on Uniform State Laws, including a 2014 revision to the terms of what is popularly known as the "superlien," in which a lien for
a specified amount of assessments takes priority over most other liens and encumbrances on the subject property in a foreclosure.

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

SECTION 1. In Colorado Revised Statutes, repeal and reenact, with amendments, 38-33.3-316 as follows:

38-33.3-316. Lien for sums due association - enforcement. (1) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Any priority accorded to the association’s lien under this section is a priority in right and not merely a priority in payment from the proceeds of the sale of the unit by a competing lienholder or encumbrancer. Unless the declaration provides otherwise, reasonable attorney’s fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) and any other sums due to the association under the declaration, this article, or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. A lien under this section is not subject to exemption under part 2 of article 41 of this title. <\{homestead exemption\}>

(2) A lien under this section has priority over all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances
THAT THE ASSOCIATION CREATES, ASSUMES, OR TAKES SUBJECT TO;

(b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
SECTION, A FIRST SECURITY INTEREST ON THE UNIT RECORDED BEFORE THE DATE
ON WHICH THE ASSESSMENT SOUGHT TO BE ENFORCED BECAME DELINQUENT OR,
IN A COOPERATIVE, THE FIRST SECURITY INTEREST ENCUMBERING ONLY THE
UNIT OWNER’S INTEREST AND PERFECTED BEFORE THE DATE ON WHICH THE
ASSESSMENT SOUGHT TO BE ENFORCED BECAME DELINQUENT;

(c) LIENS FOR REAL ESTATE TAXES AND OTHER GOVERNMENTAL
ASSESSMENTS OR CHARGES AGAINST THE UNIT OR COOPERATIVE; AND

(d) MECHANICS’ OR MATERIALMEN’S LIENS TO THE EXTENT THAT LAW
OF THIS STATE OTHER THAN THIS ARTICLE GIVES PRIORITY TO MECHANICS’ OR
MATERIALMEN’S LIENS.

(3) A LIEN UNDER THIS SECTION ALSO HAS PRIORITY OVER A SECURITY
INTEREST DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION,
BUT ONLY TO THE EXTENT OF:

(a) THE UNPAID AMOUNT OF ASSESSMENTS FOR COMMON EXPENSES,
NOT TO EXCEED SIX MONTHS FOR EACH BUDGET YEAR OF THE ASSOCIATION, AS
BASED ON THE PERIODIC BUDGET ADOPTED BY THE ASSOCIATION UNDER
SECTION 38-33.3-315 (1) FOR THE APPLICABLE YEAR; AND

(b) REASONABLE ATTORNEY FEES AND COSTS INCURRED BY THE
ASSOCIATION IN ENFORCING THE ASSOCIATION’S LIEN.

(4) UNLESS THE DECLARATION OTHERWISE PROVIDES, IF TWO OR MORE
ASSOCIATIONS HAVE LIENS FOR ASSESSMENTS CREATED AT ANY TIME ON THE
SAME PROPERTY, THOSE LIENS HAVE EQUAL PRIORITY.

(5) RECORDING OF THE DECLARATION CONSTITUTES RECORD NOTICE
AND PERFECTION OF THE LIEN. NO FURTHER RECORDATION OF ANY CLAIM OF
LIEN FOR ASSESSMENT UNDER THIS SECTION IS REQUIRED.
(6) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(7) This section does not prohibit an action by an association against a unit owner to recover past due sums for which subsection (1) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(8) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(9) The association, upon request made in a record, shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(10) On nonpayment of an assessment on a unit, the association is entitled to obtain possession of the unit under Article 40 of Title 13, C.R.S. <<forcible entry and detainer>>

(11) The association's lien may be foreclosed as provided in this subsection and subsection (16) of this section:

(a) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate;

(b) In a cooperative whose unit owners' interests in the units are real estate, as determined in accordance with section 38-33.3-105, the association's lien must be foreclosed in like manner as a
MORTGAGE ON REAL ESTATE; AND

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with section 38-33.3-105, the association's lien must be foreclosed in like manner as a security interest under the "Uniform Commercial Code, Secured Transactions", article 9 of title 4, C.R.S.

(12) If the unit owner's interest in a unit in a cooperative is real estate, the following requirements apply: <Note: This subsection was set off by brackets; not sure why. (DHG)>

(a) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation and at any time, date, and place. The association shall give to the unit owner and any lessee of the unit owner reasonable notice in a record of the time, date, and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time and date after which a private disposition may be made. The same notice must also be sent to any other person that has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. A sale may not be held until five weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.
(b) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure sale.

(c) The proceeds of a foreclosure sale must be applied in the following order:

(I) The reasonable expenses of sale;

(II) The reasonable expenses of securing possession before sale; the reasonable expenses of holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges and premiums on insurance; and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney's fees, costs, and other legal expenses incurred by the association;

(III) Satisfaction of the association's lien;

(IV) Satisfaction in the order of priority of any subordinate claim of record; and

(V) Remittance of any excess to the unit owner.

(d) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices
REQUIRED BY THIS SUBSECTION ARE SUFFICIENT PROOF OF THE FACTS RECITED
AND OF THE AUTHORITY TO SIGN. FURTHER PROOF OF AUTHORITY IS NOT
REQUIRED EVEN THOUGH THE ASSOCIATION IS NAMED AS GRANTEE IN THE
CONVEYANCE.

(e) At any time before the association has disposed of a unit in
a cooperative or entered into a contract for its disposition under the
power of sale, the unit owners or the holder of any subordinate
security interest may cure the unit owner's default and prevent sale
or other disposition by tendering the performance due under the
security agreement, including any amounts due because of exercise
of a right to accelerate, plus the reasonable expenses of proceeding
to foreclosure incurred to the time of tender, including reasonable
attorney's fees and costs of the creditor.

(13) In an action by an association to collect assessments or
to foreclose a lien on a unit under this section, the court may appoint
a receiver to collect all sums alleged to be due and owing to a unit
owner before commencement or during pendency of the action. The
receivership is governed by part 6 of article 38 of this title. The court
may order the receiver to pay any sums held by the receiver to the
association during pendency of the action to the extent of the
association's common expense assessments based on a periodic budget
adopted by the association pursuant to section 38-33.3-315.

(14) An association may not commence an action to foreclose
a lien on a unit under this section or to evict a unit owner under
subsection (10) of this section unless:

(a) The unit owner, at the time the action is commenced, owes
a sum equal to at least THREE MONTHS <{current law says 6 months}> of
COMMON EXPENSE ASSESSMENTS BASED ON THE PERIODIC BUDGET LAST ADOPTED BY THE ASSOCIATION PURSUANT TO SECTION 38-33.3-315 (1) AND THE UNIT OWNER HAS FAILED TO ACCEPT OR COMPLY WITH A PAYMENT PLAN OFFERED BY THE ASSOCIATION; AND

(b) THE EXECUTIVE BOARD VOTES TO COMMENCE A FORECLOSURE ACTION SPECIFICALLY AGAINST THAT UNIT OR TO EVICT THE UNIT OWNER.

(15) UNLESS THE PARTIES OTHERWISE AGREE, THE ASSOCIATION SHALL APPLY ANY SUMS PAID BY UNIT OWNERS THAT ARE DELINQUENT IN PAYING ASSESSMENTS IN THE FOLLOWING ORDER:

(a) UNPAID ASSESSMENTS;

(b) LATE CHARGES;

(c) REASONABLE ATTORNEY FEES AND COSTS AND OTHER REASONABLE COLLECTION CHARGES; AND

(d) ALL OTHER UNPAID FEES, CHARGES, FINES, PENALTIES, INTEREST, AND LATE CHARGES.

(16) IF THE ONLY SUMS DUE WITH RESPECT TO A UNIT ARE FINES AND RELATED SUMS IMPOSED AGAINST THE UNIT, A FORECLOSURE ACTION MAY NOT BE COMMENCED AGAINST THE UNIT UNLESS THE ASSOCIATION HAS A JUDGMENT AGAINST THE UNIT OWNER FOR THE FINES AND RELATED SUMS AND HAS PERFECTED A JUDGMENT LIEN AGAINST THE UNIT UNDER ARTICLE 52 OF TITLE 13, C.R.S.

(17) EVERY ASPECT OF A FORECLOSURE, SALE, OR OTHER DISPOSITION UNDER THIS SECTION, INCLUDING THE METHOD, ADVERTISING, TIME, DATE, PLACE, AND TERMS, MUST BE COMMERCIAL REALISTIC.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect Month dd, year; <{how much lead time would be appropriate here?}> except that, if a referendum
petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to the assertion of liens for assessments due on or after the applicable effective date of this act.