

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0692.01 Yelana Love x2295

SENATE BILL 22-122

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

Tipper,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE ENACTMENT OF AMENDMENTS TO THE "COLORADO
102 UNIFORM FRAUDULENT TRANSFER ACT" RECOMMENDED BY
103 THE UNIFORM LAW COMMISSION, AND, IN CONNECTION
104 THEREWITH, CHANGING THE NAME OF THE "COLORADO
105 UNIFORM FRAUDULENT TRANSFER ACT" TO THE "COLORADO
106 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://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. In 2014, the

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

Uniform Law Commission approved a set of amendments to the "Colorado Uniform Fraudulent Transfer Act". The bill enacts those amendments. The principal features of the amendments are:

- **Title change.** The title of the act is changed to the "Colorado Uniform Voidable Transactions Act" (act).
- **Choice of law.** A new provision 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.
- **Defenses.** Defenses available to a transferee or obligee are refined 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 the transfer 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 a transfer 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").

- **Medium neutrality.** In order to accommodate modern technology, the references in the act to a "writing" have been replaced with "record" and related changes are made.
- **Style.** The amendments make a number of stylistic changes that are not intended to change the meaning of the act, including retitling of the act.

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

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

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

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

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

14 (1) "Affiliate" means:

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

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

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

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

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

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

17 (7.5) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
18 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
19 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

20 (7.7) "ENTITY" HAS THE SAME MEANING AS SET FORTH IN SECTION
21 7-90-102 (20).

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

26 (11.5) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
27 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER

1 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

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

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

6 **38-8-103. Insolvency.** (2) A debtor ~~who~~ THAT is generally not
7 paying ~~his~~ THE DEBTOR'S debts as they become due OTHER THAN AS A
8 RESULT OF A BONA FIDE DISPUTE is presumed to be insolvent. THE
9 PRESUMPTION IMPOSES ON THE PARTY AGAINST WHICH THE PRESUMPTION
10 IS DIRECTED THE BURDEN OF PROVING THAT THE NONEXISTENCE OF
11 INSOLVENCY IS MORE PROBABLE THAN ITS EXISTENCE.

12 (3) ~~A partnership is insolvent under subsection (1) of this section~~
13 ~~if the sum of the partnership's debts is greater than the aggregate of all of~~
14 ~~the partnership's assets, at a fair valuation, and the sum of the excess of~~
15 ~~the value of each general partner's nonpartnership assets over the partner's~~
16 ~~nonpartnership debts~~ A DEBTOR THAT IS INSOLVENT WITHIN THE MEANING
17 OF THE FEDERAL BANKRUPTCY LAW IS INSOLVENT.

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

20 **38-8-104. Value.** (2) For the purposes of sections ~~38-8-105~~
21 38-8-105 (1)(b) and 38-8-106, a person gives a reasonably equivalent
22 value if the person acquires an interest of the debtor in an asset pursuant
23 to a regularly conducted, noncollusive sale, foreclosing on assets subject
24 to a lien, or pursuant to the execution of a power of sale for the
25 acquisition or disposition of the interest of the debtor upon default under
26 a mortgage, deed of trust, or security agreement.

27 **SECTION 5.** In Colorado Revised Statutes, 38-8-105, **amend** (1)

1 introductory portion, (1)(b)(II), (2) introductory portion, and (2)(k); and
2 **add** (3) as follows:

3 **38-8-105. Transfer or obligation voidable as to present or**
4 **future creditor.** (1) A transfer made or obligation incurred by a debtor
5 is ~~fraudulent~~ VOIDABLE as to a creditor, whether the creditor's claim arose
6 before or after the transfer was made or the obligation was incurred, if the
7 debtor made the transfer or incurred the obligation:

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

10 (II) Intended to incur, or believed or reasonably should have
11 believed that ~~he~~ THE DEBTOR would incur, debts beyond ~~his~~ THE DEBTOR'S
12 ability to pay as they became due.

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

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

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

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

23 **38-8-106. Transfer or obligation voidable as to present**
24 **creditor.** (1) A transfer made or obligation incurred by a debtor is
25 ~~fraudulent~~ VOIDABLE as to a creditor whose claim arose before the
26 transfer was made or the obligation was incurred if the debtor made the
27 transfer or incurred the obligation without receiving a reasonably

1 equivalent value in exchange for the transfer or obligation and the debtor
2 was insolvent at that time or the debtor became insolvent as a result of the
3 transfer or obligation.

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

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

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

15 **38-8-107. When transfer is made or obligation is incurred.**

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

17 (a) A transfer is made:

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

24 (4) A transfer is not made until the debtor has acquired rights in
25 the asset transferred.

26 (5) An obligation is incurred:

27 (b) If evidenced by a ~~writing~~ RECORD, when the ~~writing~~ executed

1 RECORD SIGNED by the obligor is delivered to or for the benefit of the
2 obligee.

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

5 **38-8-108. Remedies of creditor.** (1) In an action for relief
6 against a transfer or obligation under this ~~article~~ ARTICLE 8, a creditor,
7 subject to the limitations in section 38-8-109, may obtain:

8 (b) An attachment or other provisional remedy against the asset
9 transferred or other property of the transferee ~~in accordance with the~~
10 ~~procedure prescribed by the Colorado rules of civil procedure~~ IF
11 AVAILABLE UNDER APPLICABLE LAW;

12 (c) With respect to a transfer made or obligation incurred that is
13 ~~fraudulent~~ VOIDABLE under section 38-8-105 (1)(a), a judgment for one
14 and one-half the value of the asset transferred or for one and one-half the
15 amount necessary to satisfy the creditor's claim, whichever is less,
16 together with the creditor's actual costs; except that any judgment entered
17 against a person under this ~~paragraph (c)~~ SUBSECTION (1)(c) is in lieu of,
18 not in addition to, a judgment against the same person under section
19 38-8-109 (2). No judgment may be entered pursuant to this ~~paragraph (c)~~
20 SUBSECTION (1)(c) against a person other than the debtor unless that
21 person also acts with wrongful intent as defined in section 38-8-105
22 (1)(a); otherwise, judgment for money damages against a person other
23 than the debtor may be entered only as provided in section 38-8-109. No
24 judgment may be entered under this ~~paragraph (c)~~ SUBSECTION (1)(c)
25 unless a court of competent jurisdiction enters or has entered a judgment
26 or order establishing the validity of the creditor's claim against the debtor.

27 **SECTION 9.** In Colorado Revised Statutes, 38-8-109, **amend** (1),

1 (2), (4) introductory portion, (4)(a), (4)(b), (5)(b), and (6)(a); and **add** (7)
2 and (8) as follows:

3 **38-8-109. Defenses, liability, and protection of transferee or**
4 **obligee.** (1) A transfer or obligation is not voidable under section
5 38-8-105 (1)(a) against a person ~~who~~ THAT took in good faith and for a
6 reasonably equivalent value GIVEN TO THE DEBTOR or against any
7 subsequent transferee or obligee.

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

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

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

18 ~~(b)~~ (II) ~~Any subsequent~~ AN IMMEDIATE OR MEDIATE transferee OF
19 THE FIRST TRANSFEREE, other than:

20 (A) A good-faith transferee ~~or obligee who~~ THAT took for value;
21 ~~or from any subsequent transferee or obligee.~~

22 (B) AN IMMEDIATE OR MEDIATE GOOD-FAITH TRANSFEREE OF A
23 PERSON DESCRIBED IN SUBSECTION (2)(a)(II)(A) OF THIS SECTION.

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

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

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

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

8 (5) A transfer is not voidable under section 38-8-105 (1)(b) or
9 38-8-106 if the transfer results from:

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

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

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

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

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

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

26 (c) THE TRANSFEREE HAS THE BURDEN OF PROVING THE
27 APPLICABILITY TO THE TRANSFEREE OF SUBSECTION (2)(a)(II)(A) OR

1 (2)(a)(II)(B) OF THIS SECTION.

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

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

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

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

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

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

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

21 **SECTION 11.** In Colorado Revised Statutes, **add** 38-8-110.3 and
22 38-8-113 as follows:

23 **38-8-110.3. Governing law.** (1) IN THIS SECTION, THE
24 FOLLOWING RULES DETERMINE A DEBTOR'S LOCATION:

25 (a) A DEBTOR WHO IS AN INDIVIDUAL IS LOCATED AT THE
26 INDIVIDUAL'S PRINCIPAL RESIDENCE.

27 (b) A DEBTOR THAT IS AN ENTITY AND HAS ONLY ONE PLACE OF

1 BUSINESS IS LOCATED AT ITS PLACE OF BUSINESS.

2 (c) A DEBTOR THAT IS AN ENTITY AND HAS MORE THAN ONE PLACE
3 OF BUSINESS IS LOCATED AT ITS CHIEF EXECUTIVE OFFICE.

4 (2) A CLAIM FOR RELIEF IN THE NATURE OF A CLAIM FOR RELIEF
5 UNDER THIS ARTICLE 8 IS GOVERNED BY THE LOCAL LAW OF THE
6 JURISDICTION IN WHICH THE DEBTOR OR ASSET IS LOCATED WHEN THE
7 TRANSFER IS MADE OR THE OBLIGATION IS INCURRED.

8 **38-8-113. Relation to electronic signatures in federal**
9 **"Electronic Signatures in Global and National Commerce Act"**. THIS
10 ARTICLE 8 MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC
11 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC.
12 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101
13 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC
14 DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT
15 ACT, 15 U.S.C. SEC. 7003 (b).

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

18 **2-5-102. Inclusions - nonstatutory.** (7) There shall be included
19 in the publication of the ~~"Colorado Uniform Fraudulent Transfer Act"~~
20 "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT", as nonstatutory
21 matter, following each section of the article, the full text of the official
22 comments to that section contained in the official volume containing the
23 1984 official text of the "Uniform Fraudulent Transfer Act" issued by the
24 National Conference of Commissioners on Uniform State Laws,
25 INCLUDING CHANGES TO THE OFFICIAL COMMENTS MADE BY THE 2014
26 AMENDMENTS TO THE UNIFORM ACT, with any changes in the official
27 comments or Colorado comments to correspond to Colorado changes in

1 the uniform act. The comments shall be prepared by the revisor of statutes
2 and approved for publication by the committee on legal services.

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

13 (2) This act applies to transactions occurring on or after the
14 applicable effective date of this act.