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SENATE BILL 25-133

BY SENATOR(S) Snyder and Carson, Roberts;
also REPRESENTATIVE(S) Soper and Camacho, Lindstedt, Marshall,
Woodrow.

CONCERNING VOIDABLE TRANSACTIONS, AND, IN CONNECTION THEREWITH,
UPDATING THE "COLORADO UNIFORM FRAUDULENT TRANSFERS
ACT" AND RENAMING IT THE "COLORADO VOIDABLE TRANSACTIONS
ACT".

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

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

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

SECTION 2. In Colorado Revised Statutes, 38-8-102, **amend** the
introductory portion, (1)(a) introductory portion, (1)(a)(II), (1)(b)
introductory portion, (1)(b)(I), (1)(d), (3), (8) introductory portion, and (10);

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

and **add** (7.5), (7.7), (11.5), and (12.5) as follows:

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

(1) "Affiliate" means:

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

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

(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 THE TERM IS 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 TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

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

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

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

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

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

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

~~(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~~ A DEBTOR THAT IS INSOLVENT AS DEFINED IN 11 U.S.C. SEC. 101 (32) OF THE FEDERAL BANKRUPTCY CODE IS INSOLVENT.

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

38-8-105. Transfer or obligation voidable as to present and future creditors. (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 ~~he~~ THE DEBTOR would incur, debts beyond ~~his~~ THE DEBTOR'S ability to pay as they became due.

(2) In determining actual intent under ~~paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) 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~~ THAT 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.

(4) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE LAST PARAGRAPH OF COMMENT EIGHT TO SECTION FOUR OF THE "UNIFORM VOIDABLE TRANSACTIONS ACT", AS AMENDED IN 2014 BY THE UNIFORM LAW COMMISSION, DOES NOT APPLY IN COLORADO.

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

38-8-106. Transfers or obligation voidable as to present creditors. (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.

(3) EXCEPT AS PROVIDED BY SECTION 38-8-103 (2), A CREDITOR MAKING A CLAIM FOR RELIEF PURSUANT TO 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 6. In Colorado Revised Statutes, 38-8-107, **amend** (1) introductory portion, (1)(a)(I), and (5)(b) as follows:

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

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

(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~~ WHICH 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

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

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

(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~~ A judgment entered against a person under this ~~paragraph-(c)~~ SUBSECTION (1)(c) is in lieu of, not in addition to, a judgment against the same person under section 38-8-109 (2). ~~No~~ A judgment may NOT be entered pursuant to this ~~paragraph-(c)~~ SUBSECTION (1)(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~~ A judgment may NOT be entered under this ~~paragraph (c)~~ SUBSECTION (1)(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 8. In Colorado Revised Statutes, 38-8-109, **amend** (1), (2), (4) introductory portion, (4)(a), (4)(b), and (5)(b); 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 ~~who~~ THAT took in good faith and for a reasonably equivalent value GIVEN TO THE DEBTOR or against ~~any~~ A subsequent transferee or obligee.

(2) TO THE EXTENT A TRANSFER IS VOIDABLE 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~~ A DIRECT OR INDIRECT transferee OF THE FIRST TRANSFEREE, other than:

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

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

(4) Notwithstanding voidability of a transfer or an obligation under this ~~article~~ ARTICLE 8, 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~~ AN interest in the asset transferred;

(b) Enforcement of ~~any~~ AN 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 THE ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF THE OBLIGATION IT SECURES.

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

(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 SECTION;

(b) EXCEPT AS PROVIDED IN SUBSECTIONS (7)(c) AND (7)(d) OF THIS SECTION, 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 SUBSECTION (2)(a)(II)(A) OR (2)(a)(II)(B) OF THIS SECTION; AND

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

38-8-110. Extinguishment of a claim for relief. (1) A ~~cause of~~

~~action~~ CLAIM FOR RELIEF with respect to a ~~fraudulent~~ VOIDABLE transfer or obligation under this ~~article~~ ARTICLE 8 is extinguished unless action is brought:

(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;

(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

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

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

38-8-113. Relation to electronic signatures in the federal "Electronic Signatures in Global and National Commerce Act". THIS ARTICLE 8 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 SUPERCEDE 15 U.S.C. SEC. 7001 (c) OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN 15 U.S.C. SEC. 7003 (b).

SECTION 11. 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 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" 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~~ GUIDANCE ON HOW TO ACCESS THE OFFICIAL COMMENTS OF THE "UNIFORM VOIDABLE TRANSACTIONS ACT". The

~~comments~~ GUIDANCE ON HOW TO ACCESS THE OFFICIAL COMMENTS shall be prepared by the revisor of statutes and approved for publication by the committee on legal services.

SECTION 12. Act subject to petition - effective date - applicability. (1) 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; 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 2026 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 claims filed on or after the applicable effective date of this act.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO