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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

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
1.21.15

DRAFT

LLS NO. 15-0666.01 Debbie Haskins x2045

HOUSE BILL

HOUSE SPONSORSHIP

Foote,

SENATE SPONSORSHIP

Steadman,

BILL TOPIC: "Uniform Interstate Family Support Act 2008 Update"

DEADLINES: Finalize by: 26 JAN 2015 File by: 28 JAN 2015

A BILL FOR AN ACT

101 CONCERNING ENACTMENT OF THE 2008 AMENDMENTS TO THE
102 "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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 14-5-102, **amend** (2),
3 (4), (8), (9), (10), (12), (13), (14), (16), (17), (18), (19), (21), (22), (23),
4 and (24); **repeal** (7); and **add** (2.5), (3.3), (3.4), (3.5), (8.5), and (13.5) as
5 follows:

6 **14-5-102. Definitions.** In this article:

7 (2) "Child support order" means a support order for a child,
8 including a child who has attained the age of majority under the law of
9 the issuing state OR FOREIGN COUNTRY.

1 (2.5) "CONVENTION" MEANS THE CONVENTION ON THE
2 INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF
3 FAMILY MAINTENANCE, CONCLUDED AT THE HAGUE ON NOVEMBER 23,
4 2007.

5 (3.3) "FOREIGN COUNTRY" MEANS A COUNTRY, INCLUDING A
6 POLITICAL SUBDIVISION THEREOF, OTHER THAN THE UNITED STATES, THAT
7 AUTHORIZES THE ISSUANCE OF SUPPORT ORDERS AND:

8 (A) WHICH HAS BEEN DECLARED UNDER THE LAW OF THE UNITED
9 STATES TO BE A FOREIGN RECIPROCATING COUNTRY;

10 (B) WHICH HAS ESTABLISHED A RECIPROCAL ARRANGEMENT FOR
11 CHILD SUPPORT WITH THIS STATE AS PROVIDED IN SECTION 14-5-308;

12 (C) WHICH HAS ENACTED A LAW OR ESTABLISHED PROCEDURES
13 FOR THE ISSUANCE AND ENFORCEMENT OF SUPPORT ORDERS WHICH ARE
14 SUBSTANTIALLY SIMILAR TO THE PROCEDURES UNDER THIS ARTICLE; <{We
15 need an "AND or an "OR" here. Is a country required to meet all of A,
16 B, C, D? Or only one of them?}>

17 (D) IN WHICH THE CONVENTION IS IN FORCE WITH RESPECT TO THE
18 UNITED STATES.

19 (3.4) "FOREIGN SUPPORT ORDER" MEANS A SUPPORT ORDER OF A
20 FOREIGN TRIBUNAL.

21 (3.5) "FOREIGN TRIBUNAL" MEANS A COURT, ADMINISTRATIVE
22 AGENCY, OR QUASI-JUDICIAL ENTITY OF A FOREIGN COUNTRY WHICH IS
23 AUTHORIZED TO ESTABLISH, ENFORCE, OR MODIFY SUPPORT ORDERS OR TO
24 DETERMINE PARENTAGE OF A CHILD. THE TERM INCLUDES A COMPETENT
25 AUTHORITY UNDER THE CONVENTION.

26 (4) "Home state" means the state OR FOREIGN COUNTRY in which
27 a child lived with a parent or a person acting as parent for at least six

1 consecutive months immediately preceding the time of filing of a petition
2 or comparable pleading for support and, if a child is less than six months
3 old, the state OR FOREIGN COUNTRY in which the child lived from birth
4 with any of them. A period of temporary absence of any of them is
5 counted as part of the six-month or other period.

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

10 (8) "Initiating tribunal" means the ~~authorized~~ tribunal ~~in an~~
11 ~~initiating~~ OF A state OR FOREIGN COUNTRY FROM WHICH A PETITION OR
12 COMPARABLE PLEADING IS FORWARDED OR IN WHICH A PETITION OR
13 COMPARABLE PLEADING IS FILED FOR FORWARDING TO ANOTHER STATE OR
14 FOREIGN COUNTRY.

15 (8.5) "ISSUING FOREIGN COUNTRY" MEANS THE FOREIGN COUNTRY
16 IN WHICH A TRIBUNAL ISSUES A SUPPORT ORDER OR A JUDGMENT
17 DETERMINING PARENTAGE OF A CHILD.

18 (9) "Issuing state" means the state in which a tribunal issues a
19 support order or ~~renders~~ a judgment determining parentage OF A CHILD.

20 (10) "Issuing tribunal" means the tribunal OF A STATE OR FOREIGN
21 COUNTRY that issues a support order or ~~renders~~ a judgment determining
22 parentage OF A CHILD.

23 (12) "Obligee" means:

24 (A) An individual to whom a duty of support is or is alleged to be
25 owed or in whose favor a support order ~~has been issued~~ or a judgment
26 determining parentage OF A CHILD has been ~~rendered~~ ISSUED;

27 (B) A FOREIGN COUNTRY, state, or political subdivision OF A

1 STATE to which the rights under a duty of support or support order have
2 been assigned or which has independent claims based on financial
3 assistance provided to an individual obligee ~~or~~ IN PLACE OF CHILD
4 SUPPORT;

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

7 (D) A PERSON THAT IS A CREDITOR IN A PROCEEDING UNDER PART
8 7 OF THIS ARTICLE.

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

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

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

14 (C) ~~Who~~ Is liable under a support order; OR

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

16 (13.5) "OUTSIDE THIS STATE" MEANS A LOCATION IN ANOTHER
17 STATE OR A COUNTRY OTHER THAN THE UNITED STATES, WHETHER OR NOT
18 THE COUNTRY IS A FOREIGN COUNTRY.

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

24 (16) "Register" means to file IN A TRIBUNAL OF THIS STATE a
25 support order or judgment determining parentage ~~in the appropriate~~
26 ~~location for the filing of foreign support orders~~ OF A CHILD ISSUED IN
27 ANOTHER STATE OR A FOREIGN COUNTRY.

1 (17) "Registering tribunal" means a tribunal in which a support
2 order OR JUDGMENT DETERMINING PARENTAGE OF A CHILD is registered.

3 (18) "Responding state" means a state in which a ~~proceeding~~
4 PETITION OR COMPARABLE PLEADING FOR SUPPORT OR TO DETERMINE
5 PARENTAGE OF A CHILD is filed or to which a ~~proceeding~~ PETITION OR
6 COMPARABLE PLEADING is forwarded for filing from ~~an initiating~~
7 ANOTHER state ~~under this article or a law or procedure substantially~~
8 ~~similar to this article~~ OR A FOREIGN COUNTRY.

9 (19) "Responding tribunal" means the authorized tribunal in a
10 responding state OR FOREIGN COUNTRY.

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

15 ~~(A) An AN Indian NATION OR tribe. and~~

16 ~~(B) A foreign country or political subdivision that:~~

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

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

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

24 (22) "Support enforcement agency" means a public official,
25 GOVERNMENTAL ENTITY, or PRIVATE agency authorized to: ~~seek:~~

26 (A) SEEK enforcement of support orders or laws relating to the
27 duty of support;

- 1 (B) SEEK establishment or modification of child support;
2 (C) REQUEST determination of parentage OF A CHILD;
3 (D) ~~Location of~~ ATTEMPT TO LOCATE obligors or their assets; or
4 (E) REQUEST determination of the controlling child support order.

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

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

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

19 **14-5-103. State tribunals and support enforcement agency.**

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

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

23 <{how should this be filled in - should it be "support enforcement
24 agency"?}>

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

27 **14-5-104. Remedies cumulative.** (a) Remedies provided by this

1 article are cumulative and do not affect the availability of remedies under
2 other law ~~including~~ OR the recognition of a FOREIGN support order ~~of a~~
3 ~~foreign country or political subdivision~~ on the basis of comity.

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

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

- 10 (1) A FOREIGN SUPPORT ORDER;
11 (2) A FOREIGN TRIBUNAL; OR
12 (3) AN OBLIGEE, OBLIGOR, OR CHILD RESIDING IN A FOREIGN
13 COUNTRY.

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

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

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

23 **14-5-201. Bases for jurisdiction over nonresident.** (a) In a
24 proceeding to establish or enforce a support order or to determine
25 parentage OF A CHILD, a tribunal of this state may exercise personal
26 jurisdiction over a nonresident individual or the individual's guardian or
27 conservator if:

1 (1) The individual is personally served with a summons within
2 this state;

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

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

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

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

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

14 (7) THE INDIVIDUAL ASSERTED PARENTAGE OF A CHILD IN THE
15 PUTATIVE FATHER REGISTRY MAINTAINED IN THIS STATE BY THE
16 REGISTRAR OF VITAL STATISTICS; OR <*see §25-2-112 (3) registrar*
17 *accepts forms re: putative fathers but I'm not sure if CO has a putative*
18 *father registry - what should be put here?*>

19 ~~(7)~~ (8) There is any other basis consistent with the constitutions of
20 this state and the United States for the exercise of personal jurisdiction.

21 (b) The bases of personal jurisdiction set forth in subsection (a)
22 of this section or in any other law of this state may not be used to acquire
23 personal jurisdiction for a tribunal of ~~the~~ THIS state to modify a child
24 support order of another state unless the requirements of section 14-5-611
25 ~~or 14-5-615~~ are met, OR IN THE CASE OF A FOREIGN SUPPORT ORDER,
26 UNLESS THE REQUIREMENTS OF SECTION 14-5-615 ARE MET.

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

1 follows:

2 **14-5-203. Initiating and responding tribunals of this**
3 **state.** Under this article, a tribunal of this state may serve as an initiating
4 tribunal to forward proceedings to A TRIBUNAL OF another state, and as a
5 responding tribunal for proceedings initiated in another state OR A
6 FOREIGN COUNTRY.

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

9 **14-5-204. Simultaneous proceedings.** (a) A tribunal of this state
10 may exercise jurisdiction to establish a support order if the petition or
11 comparable pleading is filed after a ~~petition or comparable~~ pleading is
12 filed in another state OR A FOREIGN COUNTRY only if:

13 (1) The petition or comparable pleading in this state is filed before
14 the expiration of the time allowed in the other state OR THE FOREIGN
15 COUNTRY for filing a responsive pleading challenging the exercise of
16 jurisdiction by the other state OR THE FOREIGN COUNTRY;

17 (2) The contesting party timely challenges the exercise of
18 jurisdiction in the other state OR THE FOREIGN COUNTRY; and

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

20 (b) A tribunal of this state may not exercise jurisdiction to
21 establish a support order if the petition or comparable pleading is filed
22 before a petition or comparable pleading is filed in another state OR A
23 FOREIGN COUNTRY if:

24 (1) The petition or comparable pleading in the other state OR
25 FOREIGN COUNTRY is filed before the expiration of the time allowed in
26 this state for filing a responsive pleading challenging the exercise of
27 jurisdiction by this state;

1 (2) The contesting party timely challenges the exercise of
2 jurisdiction in this state; and

3 (3) If relevant, the other state OR FOREIGN COUNTRY is the home
4 state of the child.

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

7 **14-5-206. Continuing jurisdiction to enforce child support**
8 **order.** (a) A tribunal of this state that has issued a child support order
9 consistent with the law of this state may serve as an initiating tribunal to
10 request a tribunal of another state to enforce:

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

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

16 **14-5-207. Determination of controlling child support order.**

17 (a) If a proceeding is brought under this article and only one tribunal has
18 issued a child support order, the order of that tribunal controls and must
19 be ~~so~~ recognized.

20 (b) If a proceeding is brought under this article, and two or more
21 child support orders have been issued by tribunals of this state, ~~or~~ another
22 state, OR A FOREIGN COUNTRY with regard to the same obligor and same
23 child, a tribunal of this state having personal jurisdiction over both the
24 obligor and individual obligee shall apply the following rules and by
25 order shall determine which order controls AND MUST BE RECOGNIZED:

26 (1) If only one of the tribunals would have continuing, exclusive
27 jurisdiction under this article, the order of that tribunal controls. ~~and must~~

1 ~~be so recognized.~~

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

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

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

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

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

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

21 **14-5-208. Child support orders for two or more obligees.** In
22 responding to registrations or petitions for enforcement of two or more
23 child support orders in effect at the same time with regard to the same
24 obligor and different individual obligees, at least one of which was issued
25 by a tribunal of another state OR A FOREIGN COUNTRY, a tribunal of this
26 state shall enforce those orders in the same manner as if the orders had
27 been issued by a tribunal of this state.

1 **SECTION 11.** In Colorado Revised Statutes, **amend** 14-5-209 as
2 follows:

3 **14-5-209. Credit for payment.** A tribunal of this state shall
4 credit amounts collected for a particular period pursuant to any child
5 support order against the amounts owed for the same period under any
6 other child support order for support of the same child issued by a
7 tribunal of this ~~or~~ STATE, another state, OR A FOREIGN COUNTRY.

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

10 **14-5-210. Application of article to nonresident subject to**
11 **personal jurisdiction.** A tribunal of this state exercising personal
12 jurisdiction over a nonresident in a proceeding under this article, under
13 other law of this state relating to a support order, or recognizing a
14 FOREIGN support order ~~of a foreign country or political subdivision on the~~
15 ~~basis of comity~~ may receive evidence from ~~another~~ OUTSIDE THIS state
16 pursuant to section 14-5-316, communicate with a tribunal ~~of another~~
17 OUTSIDE THIS state pursuant to section 14-5-317, and obtain discovery
18 through a tribunal ~~of another~~ OUTSIDE THIS state pursuant to section
19 14-5-318. In all other respects, parts 3 to ~~7~~ 6 of this article do not apply,
20 and the tribunal shall apply the procedural and substantive law of this
21 state.

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

24 **14-5-211. Continuing, exclusive jurisdiction to modify**
25 **spousal-support order.** (b) A tribunal of this state may not modify a
26 spousal-support order issued by a tribunal of another state OR A FOREIGN
27 COUNTRY having continuing, exclusive jurisdiction over that order under

1 the law of that state OR FOREIGN COUNTRY.

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

4 **14-5-301. Proceedings under article.** (b) An individual
5 petitioner or a support enforcement agency may initiate a proceeding
6 authorized under this article by filing a petition in an initiating tribunal for
7 forwarding to a responding tribunal or by filing a petition or a comparable
8 pleading directly in a tribunal of another state OR FOREIGN COUNTRY
9 which has or can obtain personal jurisdiction over the respondent.

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

12 **14-5-304. Duties of initiating tribunal.** (b) If requested by the
13 responding tribunal, a tribunal of this state shall issue a certificate or other
14 document and make findings required by the law of the responding state.
15 If the responding ~~state~~ TRIBUNAL is IN a foreign country, ~~or political~~
16 ~~subdivision~~, upon request the tribunal OF THIS STATE shall specify the
17 amount of support sought, convert that amount into the equivalent amount
18 in the foreign currency under applicable official or market exchange rate
19 as publicly reported, and provide any other documents necessary to satisfy
20 the requirements of the responding ~~state~~ FOREIGN TRIBUNAL.

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

23 **14-5-305. Duties and powers of responding tribunal.** (b) A
24 responding tribunal of this state, to the extent not prohibited by other law,
25 may do one or more of the following:

26 (1) ~~Issue~~ ESTABLISH or enforce a support order, modify a child
27 support order, determine the controlling child support order, or determine

1 parentage OF A CHILD;

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

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

8 **14-5-306. Inappropriate tribunal.** If a petition or comparable
9 pleading is received by an inappropriate tribunal of this state, the tribunal
10 shall forward the pleading and accompanying documents to an
11 appropriate tribunal ~~in~~ OF this state or another state and notify the
12 petitioner where and when the pleading was sent.

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

15 **Alternative A:**

16 **14-5-307. Duties of support enforcement agency.** (a) A support
17 enforcement agency of this state, upon request, shall provide services to
18 a petitioner in a proceeding under this article. <{Alternative A has no
19 changes to (a)}>

20 **Alternative B:**

21 **14-5-307. Duties of support enforcement agency.** (a) IN A
22 PROCEEDING UNDER THIS ARTICLE, a support enforcement agency of this
23 state, upon request:

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

26 (2) SHALL PROVIDE SERVICES TO A PETITIONER REQUESTING
27 SERVICES THROUGH A CENTRAL AUTHORITY OF A FOREIGN COUNTRY AS

1 DESCRIBED IN SECTION 14-5-102 (3.3) (A) OR (D); AND

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

4 <{do you choose Alternative A or Alternative B?}>

5 Legislative Note: The state legislature may adopt Alternative A at any
6 time in order to maintain the practice under current law.

7 The state legislature may choose to adopt Alternative B if the
8 federal legislation enabling the entry into force of the Convention
9 contains a provision authorizing an option for the state enforcement
10 agency to accept or reject an application for services originating in a
11 foreign country that is not a country defined in Section 102(5)(A) or (D),
12 a foreign reciprocating country or a foreign treaty country respectively.

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

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

18 (1) Take all steps necessary to enable an appropriate tribunal ~~in~~ OF
19 this state, ~~or~~ another state, OR A FOREIGN COUNTRY to obtain jurisdiction
20 over the respondent;

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

27 **SECTION 19.** In Colorado Revised Statutes, 14-5-308, **amend**

1 (b) as follows:

2 **14-5-308. Duty of attorney general.** (b) The attorney general
3 may determine that a foreign country ~~or political subdivision~~ has
4 established a reciprocal arrangement for child support with this state and
5 take appropriate action for notification of the determination.

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

8 **14-5-310. Duties of state information agency.** (b) The state
9 information agency shall:

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

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

18 **14-5-311. Pleadings and accompanying documents.** (a) In a
19 proceeding under this article, a petitioner seeking to establish a support
20 order, to determine parentage OF A CHILD, or to register and modify a
21 support order OF A TRIBUNAL of another state OR A FOREIGN COUNTRY
22 must file a petition. Unless otherwise ordered under section 14-5-312, the
23 petition or accompanying documents must provide, so far as known, the
24 name, residential address, and social security numbers of the obligor and
25 the obligee or the parent and alleged parent, and the name, sex, residential
26 address, social security number, and date of birth of each child for whose
27 benefit support is sought or whose parentage is to be determined. Unless

1 filed at the time of registration, the petition must be accompanied by a
2 copy of any support order known to have been issued by another tribunal.
3 The petition may include any other information that may assist in locating
4 or identifying the respondent.

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

7 **14-5-313. Costs and fees.** (b) If an obligee prevails, a responding
8 tribunal OF THIS STATE may assess against an obligor filing fees,
9 reasonable attorney's fees, other costs, and necessary travel and other
10 reasonable expenses incurred by the obligee and the obligee's witnesses.
11 The tribunal may not assess fees, costs, or expenses against the obligee
12 or the support enforcement agency of either the initiating or the
13 responding state OR FOREIGN COUNTRY, except as provided by other law.
14 Attorney's fees may be taxed as costs, and may be ordered paid directly
15 to the attorney, who may enforce the order in the attorney's own name.
16 Payment of support owed to the obligee has priority over fees, costs, and
17 expenses.

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

20 **14-5-316. Special rules of evidence and procedure.** (a) The
21 physical presence of a nonresident party who is an individual in a tribunal
22 of this state is not required for the establishment, enforcement, or
23 modification of a support order or the rendition of a judgment
24 determining parentage OF A CHILD.

25 (b) An affidavit, a document substantially complying with
26 federally mandated forms, or a document incorporated by reference in any
27 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.

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

26 **14-5-317. Communications between tribunals.** A tribunal of
27 this state may communicate with a tribunal ~~of another~~ OUTSIDE THIS state

1 ~~or foreign country or political subdivision~~ in a record, or by telephone,
2 ELECTRONIC MAIL, or other means, to obtain information concerning the
3 laws, the legal effect of a judgment, decree, or order of that tribunal, and
4 the status of a proceeding. ~~in the other state or foreign country or political~~
5 ~~subdivision.~~ A tribunal of this state may furnish similar information by
6 similar means to a tribunal ~~of another~~ OUTSIDE THIS state. ~~or foreign~~
7 ~~country or political subdivision.~~

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

10 **14-5-318. Assistance with discovery.** A tribunal of this state
11 may:

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

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

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

19 **14-5-319. Receipt and disbursement of payments.** (a) A
20 support enforcement agency or tribunal of this state shall disburse
21 promptly any amounts received pursuant to a support order, as directed
22 by the order. The agency or tribunal shall furnish to a requesting party or
23 tribunal of another state OR A FOREIGN COUNTRY a certified statement by
24 the custodian of the record of the amounts and dates of all payments
25 received.

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

PART 4

ESTABLISHMENT OF SUPPORT ORDER
OR DETERMINATION OF PARENTAGE

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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~~ OUTSIDE THIS state; or

(2) The support enforcement agency seeking the order is located ~~in another~~ OUTSIDE THIS 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

1 obligor owes a duty of support, the tribunal shall issue a support order
2 directed to the obligor and may issue other orders pursuant to section
3 14-5-305.

4 **14-5-402. Proceeding to determine parentage.** A TRIBUNAL OF
5 THIS STATE AUTHORIZED TO DETERMINE PARENTAGE OF A CHILD MAY
6 SERVE AS A RESPONDING TRIBUNAL IN A PROCEEDING TO DETERMINE
7 PARENTAGE OF A CHILD BROUGHT UNDER THIS ARTICLE OR A LAW OR
8 PROCEDURE SUBSTANTIALLY SIMILAR TO THIS ARTICLE.

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

11 **14-5-504. Immunity from civil liability.** An employer ~~who~~ THAT
12 complies with an income-withholding order issued in another state in
13 accordance with this article is not subject to civil liability to an individual
14 or agency with regard to the employer's withholding of child support from
15 the obligor's income.

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

18 **14-5-505. Penalties for noncompliance.** An employer ~~who~~ THAT
19 willfully fails to comply with an income-withholding order issued ~~by~~ IN
20 another state and received for enforcement is subject to the same penalties
21 that may be imposed for noncompliance with an order issued by a tribunal
22 of this state.

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

25 **14-5-507. Administrative enforcement of orders.** (a) A party
26 or support enforcement agency seeking to enforce a support order or an
27 income-withholding order, or both, issued ~~by a tribunal of~~ IN another state

1 OR A FOREIGN SUPPORT ORDER may send the documents required for
2 registering the order to a support enforcement agency of this state.

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

5 PART 6

6 REGISTRATION, ENFORCEMENT, AND MODIFICATION

7 OF SUPPORT ORDER

8 PART A. REGISTRATION FOR ENFORCEMENT

9 OF SUPPORT ORDER

10 **14-5-601. Registration of order for enforcement.** A support
11 order or income-withholding order issued by a tribunal of IN another state
12 OR A FOREIGN SUPPORT ORDER may be registered in this state for
13 enforcement.

14 **14-5-602. Procedure to register order for enforcement.** (a)
15 EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-5-706, a support order
16 or income-withholding order of another state OR A FOREIGN SUPPORT
17 ORDER may be registered in this state by sending the following records
18 ~~and information~~ to the appropriate tribunal in this state:

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

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

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

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

27 (A) The obligor's address and social security number;

1 (B) The name and address of the obligor's employer and any other
2 source of income of the obligor; and

3 (C) A description and the location of property of the obligor in
4 this state not exempt from execution; and

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

8 (b) On receipt of a request for registration, the registering tribunal
9 shall cause the order to be filed as ~~a foreign judgment~~ AN ORDER OF A
10 TRIBUNAL OF ANOTHER STATE OR A FOREIGN SUPPORT ORDER, together
11 with one copy of the documents and information, regardless of their form.

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

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

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

20 (2) Specify the order alleged to be the controlling order, if any;
21 and

22 (3) Specify the amount of consolidated arrears, if any.

23 (e) A request for a determination of which is the controlling order
24 may be filed separately or with a request for registration and enforcement
25 or for registration and modification. The person requesting registration
26 shall give notice of the request to each party whose rights may be affected
27 by the determination.

1 **14-5-603. Effect of registration for enforcement.** (a) A support
2 order or income-withholding order issued in another state OR A FOREIGN
3 SUPPORT ORDER is registered when the order is filed in the registering
4 tribunal of this state.

5 (b) A registered SUPPORT order issued in another state OR A
6 FOREIGN COUNTRY is enforceable in the same manner and is subject to the
7 same procedures as an order issued by a tribunal of this state.

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

11 **14-5-604. Choice of law.** (a) Except as otherwise provided in
12 subsection (d) of this section, the law of the issuing state OR FOREIGN
13 COUNTRY governs:

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

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

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

20 (b) In a proceeding for arrearages <{uniform law uses: arrears
21 but in this section and elsewhere in our UIFSA Colorado used the word
22 arrearages. Is this ok to keep as arrearages?}> under a registered
23 support order, the statute of limitation of this state, or of the issuing state
24 OR FOREIGN COUNTRY, whichever is longer, applies.

25 (c) A responding tribunal of this state shall apply the procedures
26 and remedies of this state to enforce current support and to collect
27 arrearages and interest due on a support order of another state OR A

1 FOREIGN COUNTRY registered in this state.

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

8 PART B. CONTEST OF VALIDITY OR ENFORCEMENT

9 **14-5-605. Notice of registration of order.** (a) When a support
10 order or income-withholding order issued in another state OR A FOREIGN
11 SUPPORT ORDER is registered, the registering tribunal OF THIS STATE shall
12 notify the nonregistering party. The notice must be accompanied by a
13 copy of the registered order and the documents and relevant information
14 accompanying the order.

15 (b) A notice must inform the nonregistering party:

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

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

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

25 (4) Of the amount of any alleged arrearages.

26 (c) If the registering party asserts that two or more orders are in
27 effect, a notice must also:

1 (1) Identify the two or more orders and the order alleged by the
2 registering ~~person~~ PARTY to be the controlling order and the consolidated
3 arrearages, if any;

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

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

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

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

15 **14-5-606. Procedure to contest validity or enforcement of**
16 **registered support order.** (a) A nonregistering party seeking to contest
17 the validity or enforcement of a registered SUPPORT order in this state
18 shall request a hearing within ~~twenty days after notice of the registration~~
19 THE TIME REQUIRED BY SECTION 14-5-605. The nonregistering party may
20 seek to vacate the registration, to assert any defense to an allegation of
21 noncompliance with the registered order, or to contest the remedies being
22 sought or the amount of any alleged arrearages pursuant to section
23 14-5-607.

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

27 (c) If a nonregistering party requests a hearing to contest the

1 validity or enforcement of the registered SUPPORT order, the registering
2 tribunal shall schedule the matter for hearing and give notice to the parties
3 of the date, time, and place of the hearing.

4 **14-5-607. Contest of registration or enforcement.** (a) A party
5 contesting the validity or enforcement of a registered SUPPORT order or
6 seeking to vacate the registration has the burden of proving one or more
7 of the following defenses:

8 (1) The issuing tribunal lacked personal jurisdiction over the
9 contesting party;

10 (2) The order was obtained by fraud;

11 (3) The order has been vacated, suspended, or modified by a later
12 order;

13 (4) The issuing tribunal has stayed the order pending appeal;

14 (5) There is a defense under the law of this state to the remedy
15 sought;

16 (6) Full or partial payment has been made;

17 (7) The statute of limitation under section 14-5-604 precludes
18 enforcement of some or all of the alleged arrearages; or

19 (8) The alleged controlling order is not the controlling order.

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

27 (c) If the contesting party does not establish a defense under

1 subsection (a) of this section to the validity or enforcement of ~~the~~ A
2 REGISTERED SUPPORT order, the registering tribunal shall issue an order
3 confirming the order.

4 **14-5-608. Confirmed order.** Confirmation of a registered
5 SUPPORT order, whether by operation of law or after notice and hearing,
6 precludes further contest of the order with respect to any matter that could
7 have been asserted at the time of registration.

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

10 **14-5-609. Procedure to register child support order of another**
11 **state for modification.** A party or support enforcement agency seeking
12 to modify, or to modify and enforce, a child support order issued in
13 another state shall register that order in this state in the same manner
14 provided in ~~part A of this part~~ 6 SECTIONS 14-5-601 THROUGH 14-5-608
15 if the order has not been registered. A petition for modification may be
16 filed at the same time as a request for registration, or later. The pleading
17 must specify the grounds for modification.

18 **14-5-610. Effect of registration for modification.** A tribunal of
19 this state may enforce a child support order of another state registered for
20 purposes of modification, in the same manner as if the order had been
21 issued by a tribunal of this state, but the registered SUPPORT order may be
22 modified only if the requirements of section 14-5-611 OR 14-5-613 ~~or~~
23 ~~14-5-615~~ have been met.

24 **14-5-611. Modification of child support order of another state.**
25 (a) If section 14-5-613 does not apply, ~~except as otherwise provided in~~
26 ~~section 14-5-615~~, upon petition a tribunal of this state may modify a child
27 support order issued in another state which order is registered in this state

1 if, after notice and hearing, the tribunal finds that:

2 (1) The following requirements are met:

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

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

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

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

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

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

25 (d) In a proceeding to modify a child support order, the law of the
26 state that is determined to have issued the initial controlling order governs
27 the duration of the obligation of support. The obligor's fulfillment of the

1 duty of support established by that order precludes imposition of a further
2 obligation of support by a tribunal of this state.

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

6 (f) NOTWITHSTANDING SUBSECTIONS (a) THROUGH (e) OF THIS
7 SECTION AND SECTION 14-5-201 (b), A TRIBUNAL OF THIS STATE RETAINS
8 JURISDICTION TO MODIFY AN ORDER ISSUED BY A TRIBUNAL OF THIS STATE
9 IF:

10 (1) ONE PARTY RESIDES IN ANOTHER STATE; AND

11 (2) THE OTHER PARTY RESIDES OUTSIDE THE UNITED STATES.

12 **14-5-612. Recognition of order modified in another state.** If a
13 child support order issued by a tribunal of this state is modified by a
14 tribunal of another state which assumed jurisdiction pursuant to the
15 "Uniform Interstate Family Support Act", a tribunal of this state:

16 (1) May enforce its order that was modified only as to arrears and
17 interest accruing before the modification;

18 (2) May provide appropriate relief for violations of its order which
19 occurred before the effective date of the modification; and

20 (3) Shall recognize the modifying order of the other state, upon
21 registration, for the purpose of enforcement.

22 (4) (Deleted by amendment, L. 2003, p. 1261, § 41, effective July
23 1, 2004.)

24 **14-5-613. Jurisdiction to modify child support order of**
25 **another state when individual parties reside in this state.** (a) If all of
26 the parties who are individuals reside in this state and the child does not
27 reside in the issuing state, a tribunal of this state has jurisdiction to

1 enforce and to modify the issuing state's child support order in a
2 proceeding to register that order.

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

8 **14-5-614. Notice to issuing tribunal of modification.** Within
9 thirty days after issuance of a modified child support order, the party
10 obtaining the modification shall file a certified copy of the order with the
11 issuing tribunal that had continuing, exclusive jurisdiction over the earlier
12 order, and in each tribunal in which the party knows the earlier order has
13 been registered. A party who obtains the order and fails to file a certified
14 copy is subject to appropriate sanctions by a tribunal in which the issue
15 of failure to file arises. The failure to file does not affect the validity or
16 enforceability of the modified order of the new tribunal having
17 continuing, exclusive jurisdiction.

18 PART D. REGISTRATION AND MODIFICATION
19 OF FOREIGN CHILD SUPPORT ORDER

20 **14-5-615. Jurisdiction to modify child support order of foreign**
21 **country.** (a) EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-5-711, if
22 a foreign country ~~or political subdivision that is a state will not or may not~~
23 LACKS OR REFUSES TO EXERCISE JURISDICTION TO modify its child support
24 order pursuant to its laws, a tribunal of this state may assume jurisdiction
25 to modify the child support order and bind all individuals subject to the
26 personal jurisdiction of the tribunal whether ~~or not~~ the consent to
27 modification of a child support order otherwise required of the individual

1 pursuant to section 14-5-611 has been given or whether the individual
2 seeking modification is a resident of this state or of the foreign country.
3 ~~or political subdivision.~~

4 (b) An order issued BY A TRIBUNAL OF THIS STATE MODIFYING A
5 FOREIGN CHILD SUPPORT ORDER pursuant to this section is the controlling
6 order.

7 **14-5-616. Procedure to register child support order of foreign**
8 **country for modification.** A PARTY OR SUPPORT ENFORCEMENT AGENCY
9 SEEKING TO MODIFY, OR TO MODIFY AND ENFORCE, A FOREIGN CHILD
10 SUPPORT ORDER NOT UNDER THE CONVENTION MAY REGISTER THAT
11 ORDER IN THIS STATE UNDER SECTIONS 14-5-601 THROUGH 14-5-608 IF
12 THE ORDER HAS NOT BEEN REGISTERED. A PETITION FOR MODIFICATION
13 MAY BE FILED AT THE SAME TIME AS A REQUEST FOR REGISTRATION, OR AT
14 ANOTHER TIME. THE PETITION MUST SPECIFY THE GROUNDS FOR
15 MODIFICATION.

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

18 PART 7

19 SUPPORT PROCEEDING UNDER CONVENTION

20 **14-5-701. Definitions.** IN THIS PART 7:

21 (1) "APPLICATION" MEANS A REQUEST UNDER THE CONVENTION
22 BY AN OBLIGEE OR OBLIGOR, OR ON BEHALF OF A CHILD, MADE THROUGH
23 A CENTRAL AUTHORITY FOR ASSISTANCE FROM ANOTHER CENTRAL
24 AUTHORITY.

25 (2) "CENTRAL AUTHORITY" MEANS THE ENTITY DESIGNATED BY
26 THE UNITED STATES OR A FOREIGN COUNTRY DESCRIBED IN SECTION
27 14-5-102 (3.3) (D) TO PERFORM THE FUNCTIONS SPECIFIED IN THE

1 CONVENTION.

2 (3) "CONVENTION SUPPORT ORDER" MEANS A SUPPORT ORDER OF
3 A TRIBUNAL OF A FOREIGN COUNTRY DESCRIBED IN SECTION 14-5-102 (3.3)
4 (D).

5 (4) "DIRECT REQUEST" MEANS A PETITION FILED BY AN INDIVIDUAL
6 IN A TRIBUNAL OF THIS STATE IN A PROCEEDING INVOLVING AN OBLIGEE,
7 OBLIGOR, OR CHILD RESIDING OUTSIDE THE UNITED STATES.

8 (5) "FOREIGN CENTRAL AUTHORITY" MEANS THE ENTITY
9 DESIGNATED BY A FOREIGN COUNTRY DESCRIBED IN SECTION 14-5-102
10 (3.3) (D) TO PERFORM THE FUNCTIONS SPECIFIED IN THE CONVENTION.

11 (6) "FOREIGN SUPPORT AGREEMENT":

12 (A) MEANS AN AGREEMENT FOR SUPPORT IN A RECORD THAT:

13 (i) IS ENFORCEABLE AS A SUPPORT ORDER IN THE COUNTRY OF
14 ORIGIN;

15 (ii) HAS BEEN:

16 (I) FORMALLY DRAWN UP OR REGISTERED AS AN AUTHENTIC
17 INSTRUMENT BY A FOREIGN TRIBUNAL; OR

18 (II) AUTHENTICATED BY, OR CONCLUDED, REGISTERED, OR FILED
19 WITH A FOREIGN TRIBUNAL; AND

20 (iii) MAY BE REVIEWED AND MODIFIED BY A FOREIGN TRIBUNAL;

21 AND

22 (B) INCLUDES A MAINTENANCE ARRANGEMENT OR AUTHENTIC
23 INSTRUMENT UNDER THE CONVENTION.

24 (7) "UNITED STATES CENTRAL AUTHORITY" MEANS THE
25 SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
26 SERVICES.

27 **14-5-702. Applicability.** THIS PART 7 APPLIES ONLY TO A SUPPORT

1 PROCEEDING UNDER THE CONVENTION. IN SUCH A PROCEEDING, IF A
2 PROVISION OF THIS PART 7 IS INCONSISTENT WITH PARTS 1 THROUGH 6 OF
3 THIS ARTICLE, THIS PART 7 CONTROLS.

4 **14-5-703. Relationship of governmental entity to United States**
5 **central authority.** THE [GOVERNMENTAL ENTITY] OF THIS STATE IS
6 RECOGNIZED AS THE AGENCY DESIGNATED BY THE UNITED STATES
7 CENTRAL AUTHORITY TO PERFORM SPECIFIC FUNCTIONS UNDER THE
8 CONVENTION. <*what should be put in place of governmental entity? is*
9 *it state department of human services? is it the support enforcement*
10 *agency?*>

11 **14-5-704. Initiation by [governmental entity] of support**
12 **proceeding under Convention.** (a) IN A SUPPORT PROCEEDING UNDER
13 THIS PART 7, THE [GOVERNMENTAL ENTITY] OF THIS STATE SHALL:

14 (1) TRANSMIT AND RECEIVE APPLICATIONS; AND

15 (2) INITIATE OR FACILITATE THE INSTITUTION OF A PROCEEDING
16 REGARDING AN APPLICATION IN A TRIBUNAL OF THIS STATE.

17 (b) THE FOLLOWING SUPPORT PROCEEDINGS ARE AVAILABLE TO AN
18 OBLIGEE UNDER THE CONVENTION:

19 (1) RECOGNITION OR RECOGNITION AND ENFORCEMENT OF A
20 FOREIGN SUPPORT ORDER;

21 (2) ENFORCEMENT OF A SUPPORT ORDER ISSUED OR RECOGNIZED
22 IN THIS STATE;

23 (3) ESTABLISHMENT OF A SUPPORT ORDER IF THERE IS NO EXISTING
24 ORDER, INCLUDING, IF NECESSARY, DETERMINATION OF PARENTAGE OF A
25 CHILD;

26 (4) ESTABLISHMENT OF A SUPPORT ORDER IF RECOGNITION OF A
27 FOREIGN SUPPORT ORDER IS REFUSED UNDER SECTION 14-5-708 (2), (4), OR

1 (9);

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

4 (6) MODIFICATION OF A SUPPORT ORDER OF A TRIBUNAL OF
5 ANOTHER STATE OR A FOREIGN COUNTRY.

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

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

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

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

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

19 **14-5-705. Direct request.** (a) A PETITIONER MAY FILE A DIRECT
20 REQUEST SEEKING ESTABLISHMENT OR MODIFICATION OF A SUPPORT
21 ORDER OR DETERMINATION OF PARENTAGE OF A CHILD. IN THE
22 PROCEEDING, THE LAW OF THIS STATE APPLIES.

23 (b) A PETITIONER MAY FILE A DIRECT REQUEST SEEKING
24 RECOGNITION AND ENFORCEMENT OF A SUPPORT ORDER OR SUPPORT
25 AGREEMENT. IN THE PROCEEDING, SECTIONS 14-5-706 THROUGH 14-5-713
26 APPLY.

27 (c) IN A DIRECT REQUEST FOR RECOGNITION AND ENFORCEMENT OF

1 A CONVENTION SUPPORT ORDER OR FOREIGN SUPPORT AGREEMENT:

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

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

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

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

15 **14-5-706. Registration of Convention support order.** (a)
16 EXCEPT AS OTHERWISE PROVIDED IN THIS PART 7, A PARTY WHO IS AN
17 INDIVIDUAL OR THAT IS A SUPPORT ENFORCEMENT AGENCY SEEKING
18 RECOGNITION OF A CONVENTION SUPPORT ORDER SHALL REGISTER THE
19 ORDER IN THIS STATE AS PROVIDED IN PART 6 OF THIS ARTICLE.

20 (b) NOTWITHSTANDING SECTIONS 14-5-311 AND 14-5-602 (a), A
21 REQUEST FOR REGISTRATION OF A CONVENTION SUPPORT ORDER MUST BE
22 ACCOMPANIED BY:

23 (1) A COMPLETE TEXT OF THE SUPPORT ORDER [OR AN ABSTRACT
24 OR EXTRACT OF THE SUPPORT ORDER DRAWN UP BY THE ISSUING FOREIGN
25 TRIBUNAL, WHICH MAY BE IN THE FORM RECOMMENDED BY THE HAGUE
26 CONFERENCE ON PRIVATE INTERNATIONAL LAW]; <*do you want the*
27 *language in the bracket?*>

1 (2) A RECORD STATING THAT THE SUPPORT ORDER IS ENFORCEABLE
2 IN THE ISSUING COUNTRY;

3 (3) IF THE RESPONDENT DID NOT APPEAR AND WAS NOT
4 REPRESENTED IN THE PROCEEDINGS IN THE ISSUING COUNTRY, A RECORD
5 ATTESTING, AS APPROPRIATE, EITHER THAT THE RESPONDENT HAD PROPER
6 NOTICE OF THE PROCEEDINGS AND AN OPPORTUNITY TO BE HEARD OR THAT
7 THE RESPONDENT HAD PROPER NOTICE OF THE SUPPORT ORDER AND AN
8 OPPORTUNITY TO BE HEARD IN A CHALLENGE OR APPEAL ON FACT OR LAW
9 BEFORE A TRIBUNAL;

10 (4) A RECORD SHOWING THE AMOUNT OF ARREARS, IF ANY, AND
11 THE DATE THE AMOUNT WAS CALCULATED;

12 (5) A RECORD SHOWING A REQUIREMENT FOR AUTOMATIC
13 ADJUSTMENT OF THE AMOUNT OF SUPPORT, IF ANY, AND THE INFORMATION
14 NECESSARY TO MAKE THE APPROPRIATE CALCULATIONS; AND

15 (6) IF NECESSARY, A RECORD SHOWING THE EXTENT TO WHICH THE
16 APPLICANT RECEIVED FREE LEGAL ASSISTANCE IN THE ISSUING COUNTRY.

17 (c) A REQUEST FOR REGISTRATION OF A CONVENTION SUPPORT
18 ORDER MAY SEEK RECOGNITION AND PARTIAL ENFORCEMENT OF THE
19 ORDER.

20 (d) A TRIBUNAL OF THIS STATE MAY VACATE THE REGISTRATION
21 OF A CONVENTION SUPPORT ORDER WITHOUT THE FILING OF A CONTEST
22 UNDER SECTION 14-5-707 ONLY IF, ACTING ON ITS OWN MOTION, THE
23 TRIBUNAL FINDS THAT RECOGNITION AND ENFORCEMENT OF THE ORDER
24 WOULD BE MANIFESTLY INCOMPATIBLE WITH PUBLIC POLICY.

25 (e) THE TRIBUNAL SHALL PROMPTLY NOTIFY THE PARTIES OF THE
26 REGISTRATION OR THE ORDER VACATING THE REGISTRATION OF A
27 CONVENTION SUPPORT ORDER.

1 **14-5-707. Contest of registered Convention support order.**

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

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

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

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

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

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

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

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

24 (g) A CHALLENGE OR APPEAL, IF ANY, DOES NOT STAY THE
25 ENFORCEMENT OF A CONVENTION SUPPORT ORDER UNLESS THERE ARE
26 EXCEPTIONAL CIRCUMSTANCES.

27 **14-5-708. Recognition and enforcement of registered**

1 **Convention support order.** (a) EXCEPT AS OTHERWISE PROVIDED IN
2 SUBSECTION (b) OF THIS SECTION, A TRIBUNAL OF THIS STATE SHALL
3 RECOGNIZE AND ENFORCE A REGISTERED CONVENTION SUPPORT ORDER.

4 (b) THE FOLLOWING GROUNDS ARE THE ONLY GROUNDS ON WHICH
5 A TRIBUNAL OF THIS STATE MAY REFUSE RECOGNITION AND ENFORCEMENT
6 OF A REGISTERED CONVENTION SUPPORT ORDER:

7 (1) RECOGNITION AND ENFORCEMENT OF THE ORDER IS
8 MANIFESTLY INCOMPATIBLE WITH PUBLIC POLICY, INCLUDING THE FAILURE
9 OF THE ISSUING TRIBUNAL TO OBSERVE MINIMUM STANDARDS OF DUE
10 PROCESS, WHICH INCLUDE NOTICE AND AN OPPORTUNITY TO BE HEARD;

11 (2) THE ISSUING TRIBUNAL LACKED PERSONAL JURISDICTION
12 CONSISTENT WITH SECTION 14-5-201;

13 (3) THE ORDER IS NOT ENFORCEABLE IN THE ISSUING COUNTRY;

14 (4) THE ORDER WAS OBTAINED BY FRAUD IN CONNECTION WITH A
15 MATTER OF PROCEDURE;

16 (5) A RECORD TRANSMITTED IN ACCORDANCE WITH SECTION
17 14-5-706 LACKS AUTHENTICITY OR INTEGRITY;

18 (6) A PROCEEDING BETWEEN THE SAME PARTIES AND HAVING THE
19 SAME PURPOSE IS PENDING BEFORE A TRIBUNAL OF THIS STATE AND THAT
20 PROCEEDING WAS THE FIRST TO BE FILED;

21 (7) THE ORDER IS INCOMPATIBLE WITH A MORE RECENT SUPPORT
22 ORDER INVOLVING THE SAME PARTIES AND HAVING THE SAME PURPOSE IF
23 THE MORE RECENT SUPPORT ORDER IS ENTITLED TO RECOGNITION AND
24 ENFORCEMENT UNDER THIS ARTICLE IN THIS STATE;

25 (8) PAYMENT, TO THE EXTENT ALLEGED ARREARS HAVE BEEN PAID
26 IN WHOLE OR IN PART;

27 (9) IN A CASE IN WHICH THE RESPONDENT NEITHER APPEARED NOR

1 WAS REPRESENTED IN THE PROCEEDING IN THE ISSUING FOREIGN COUNTRY:

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

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

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

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

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

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

20 **14-5-709. Partial enforcement.** IF A TRIBUNAL OF THIS STATE
21 DOES NOT RECOGNIZE AND ENFORCE A CONVENTION SUPPORT ORDER IN
22 ITS ENTIRETY, IT SHALL ENFORCE ANY SEVERABLE PART OF THE ORDER. AN
23 APPLICATION OR DIRECT REQUEST MAY SEEK RECOGNITION AND PARTIAL
24 ENFORCEMENT OF A CONVENTION SUPPORT ORDER.

25 **14-5-710. Foreign support agreement.** (a) EXCEPT AS
26 OTHERWISE PROVIDED IN SUBSECTIONS (c) AND (d) OF THIS SECTION, A
27 TRIBUNAL OF THIS STATE SHALL RECOGNIZE AND ENFORCE A FOREIGN

1 SUPPORT AGREEMENT REGISTERED IN THIS STATE.

2 (b) AN APPLICATION OR DIRECT REQUEST FOR RECOGNITION AND
3 ENFORCEMENT OF A FOREIGN SUPPORT AGREEMENT MUST BE
4 ACCOMPANIED BY:

5 (1) A COMPLETE TEXT OF THE FOREIGN SUPPORT AGREEMENT; AND

6 (2) A RECORD STATING THAT THE FOREIGN SUPPORT AGREEMENT
7 IS ENFORCEABLE AS AN ORDER OF SUPPORT IN THE ISSUING COUNTRY.

8 (c) A TRIBUNAL OF THIS STATE MAY VACATE THE REGISTRATION
9 OF A FOREIGN SUPPORT AGREEMENT ONLY IF, ACTING ON ITS OWN MOTION,
10 THE TRIBUNAL FINDS THAT RECOGNITION AND ENFORCEMENT WOULD BE
11 MANIFESTLY INCOMPATIBLE WITH PUBLIC POLICY.

12 (d) IN A CONTEST OF A FOREIGN SUPPORT AGREEMENT, A TRIBUNAL
13 OF THIS STATE MAY REFUSE RECOGNITION AND ENFORCEMENT OF THE
14 AGREEMENT IF IT FINDS:

15 (1) RECOGNITION AND ENFORCEMENT OF THE AGREEMENT IS
16 MANIFESTLY INCOMPATIBLE WITH PUBLIC POLICY;

17 (2) THE AGREEMENT WAS OBTAINED BY FRAUD OR FALSIFICATION;

18 (3) THE AGREEMENT IS INCOMPATIBLE WITH A SUPPORT ORDER
19 INVOLVING THE SAME PARTIES AND HAVING THE SAME PURPOSE IN THIS
20 STATE, ANOTHER STATE, OR A FOREIGN COUNTRY IF THE SUPPORT ORDER
21 IS ENTITLED TO RECOGNITION AND ENFORCEMENT UNDER THIS ARTICLE IN
22 THIS STATE; OR

23 (4) THE RECORD SUBMITTED UNDER SUBSECTION (b) OF THIS
24 SECTION LACKS AUTHENTICITY OR INTEGRITY.

25 (e) A PROCEEDING FOR RECOGNITION AND ENFORCEMENT OF A
26 FOREIGN SUPPORT AGREEMENT MUST BE SUSPENDED DURING THE
27 PENDENCY OF A CHALLENGE TO OR APPEAL OF THE AGREEMENT BEFORE A

1 TRIBUNAL OF ANOTHER STATE OR A FOREIGN COUNTRY.

2 **14-5-711. Modification of Convention child support order.**

3 (a) A TRIBUNAL OF THIS STATE MAY NOT MODIFY A CONVENTION CHILD
4 SUPPORT ORDER IF THE OBLIGEE REMAINS A RESIDENT OF THE FOREIGN
5 COUNTRY WHERE THE SUPPORT ORDER WAS ISSUED UNLESS:

6 (1) THE OBLIGEE SUBMITS TO THE JURISDICTION OF A TRIBUNAL OF
7 THIS STATE, EITHER EXPRESSLY OR BY DEFENDING ON THE MERITS OF THE
8 CASE WITHOUT OBJECTING TO THE JURISDICTION AT THE FIRST AVAILABLE
9 OPPORTUNITY; OR

10 (2) THE FOREIGN TRIBUNAL LACKS OR REFUSES TO EXERCISE
11 JURISDICTION TO MODIFY ITS SUPPORT ORDER OR ISSUE A NEW SUPPORT
12 ORDER.

13 (b) IF A TRIBUNAL OF THIS STATE DOES NOT MODIFY A
14 CONVENTION CHILD SUPPORT ORDER BECAUSE THE ORDER IS NOT
15 RECOGNIZED IN THIS STATE, SECTION 14-5-708 (c) APPLIES.

16 **14-5-712. Personal information - limit on use.** PERSONAL
17 INFORMATION GATHERED OR TRANSMITTED UNDER THIS PART 7 MAY BE
18 USED ONLY FOR THE PURPOSES FOR WHICH IT WAS GATHERED OR
19 TRANSMITTED.

20 **14-5-713. Record in original language - English.** A RECORD
21 FILED WITH A TRIBUNAL OF THIS STATE UNDER THIS PART 7 MUST BE IN THE
22 ORIGINAL LANGUAGE AND, IF NOT IN ENGLISH, MUST BE ACCOMPANIED BY
23 AN ENGLISH TRANSLATION.

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

26 **14-5-902. Transitional provision.** THIS ARTICLE, AS AMENDED BY
27 H.B. 15 - ____, APPLIES TO PROCEEDINGS BEGUN ON OR AFTER THE

1 **EFFECTIVE DATE OF THIS ACT** TO ESTABLISH A SUPPORT ORDER OR
2 DETERMINE PARENTAGE OF A CHILD OR TO REGISTER, RECOGNIZE,
3 ENFORCE, OR MODIFY A PRIOR SUPPORT ORDER, DETERMINATION, OR
4 AGREEMENT, WHENEVER ISSUED OR ENTERED. <{*is this considered an*
5 *optional section? should it be in statute or dealt with in an effective date*
6 *clause? see section 35 of the bill*}>

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

9 **2-5-102. Inclusions - nonstatutory.** (13) THE REVISOR OF
10 STATUTES SHALL INCLUDE IN THE PUBLICATION OF THE "UNIFORM
11 INTERSTATE FAMILY SUPPORT ACT" AS NONSTATUTORY MATTER,
12 FOLLOWING EACH AMENDED OR ADDED SECTION, THE FULL TEXT OF THE
13 OFFICIAL COMMENTS TO THAT SECTION CONTAINED IN THE 2008 OFFICIAL
14 TEXT OF THE "UNIFORM INTERSTATE FAMILY SUPPORT ACT" ISSUED BY
15 THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE
16 LAWS, WITH ANY CHANGES IN THE OFFICIAL COMMENTS TO CORRESPOND
17 TO COLORADO CHANGES IN THE "UNIFORM INTERSTATE FAMILY SUPPORT
18 ACT". THE COMMENTS SHALL BE PREPARED BY THE REVISOR OF STATUTES
19 AND APPROVED FOR PUBLICATION BY THE COMMITTEE ON LEGAL SERVICES.
20 <{**do the sponsors want to have the official comments published in**
21 **the statutes after each section? Currently, there are no official**
22 **comments in the UIFSA statutes. do you want this to be in statute or**
23 **nonstatutory?**}>

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

26 **SECTION 36. Safety clause.** The general assembly hereby finds,

1 determines, and declares that this act is necessary for the immediate
2 preservation of the public peace, health, and safety. <*do you want a*
3 *safety clause on the bill?*>

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
1.22.15

DRAFT

LLS NO. 15-0667.01 Richard Sweetman x4333

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Act Fiduciary Access To Digital Assets"

DEADLINES: Finalize by: 26 JAN 2015 File by: 28 JAN 2015

A BILL FOR AN ACT

101 CONCERNING THE "COLORADO UNIFORM FIDUCIARY ACCESS TO
102 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;

1 ELECTRONIC COMMUNICATIONS.

2 (4) "CATALOGUE OF ELECTRONIC COMMUNICATIONS" MEANS
3 INFORMATION THAT IDENTIFIES EACH PERSON WITH WHICH AN ACCOUNT
4 HOLDER HAS HAD AN ELECTRONIC COMMUNICATION, THE TIME AND DATE
5 OF THE COMMUNICATION, AND THE ELECTRONIC ADDRESS OF THE PERSON.

6 (5) "CONSERVATOR" MEANS A PERSON APPOINTED BY A COURT TO
7 MANAGE THE ESTATE OF A LIVING INDIVIDUAL. THE TERM INCLUDES A
8 LIMITED CONSERVATOR.

9 (6) "CONTENT OF AN ELECTRONIC COMMUNICATION" MEANS
10 INFORMATION CONCERNING THE SUBSTANCE OR MEANING OF A
11 COMMUNICATION THAT:

12 (a) HAS BEEN SENT OR RECEIVED BY AN ACCOUNT HOLDER;

13 (b) IS IN ELECTRONIC STORAGE BY A CUSTODIAN PROVIDING AN
14 ELECTRONIC COMMUNICATION SERVICE TO THE PUBLIC OR IS CARRIED OR
15 MAINTAINED BY A CUSTODIAN PROVIDING A REMOTE-COMPUTING SERVICE
16 TO THE PUBLIC; AND

17 (c) IS NOT READILY ACCESSIBLE TO THE PUBLIC.

18 (7) "COURT" MEANS A DISTRICT COURT OR THE PROBATE COURT
19 FOR THE CITY AND COUNTY OF DENVER.

20 (8) "CUSTODIAN" MEANS A PERSON WHO CARRIES, MAINTAINS,
21 PROCESSES, RECEIVES, OR STORES A DIGITAL ASSET OF AN ACCOUNT
22 HOLDER.

23 (9) "DIGITAL ASSET" MEANS A RECORD THAT IS ELECTRONIC. THE
24 TERM DOES NOT INCLUDE AN UNDERLYING ASSET OR LIABILITY UNLESS
25 THE ASSET OR LIABILITY IS ITSELF A RECORD THAT IS ELECTRONIC.

26 (10) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
27 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,

1 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

2 (11) "ELECTRONIC COMMUNICATION" HAS THE SAME MEANING AS
3 SET FORTH IN 18 U.S.C. SEC. 2510 (12), AS AMENDED.

4 (12) "ELECTRONIC COMMUNICATION SERVICE" MEANS A
5 CUSTODIAN THAT PROVIDES TO AN ACCOUNT HOLDER THE ABILITY TO
6 SEND OR RECEIVE AN ELECTRONIC COMMUNICATION.

7 (13) "FIDUCIARY" MEANS AN ORIGINAL, ADDITIONAL, OR
8 SUCCESSOR PERSONAL REPRESENTATIVE, CONSERVATOR, AGENT, OR
9 TRUSTEE.

10 (14) "GOVERNING INSTRUMENT" MEANS A WILL, TRUST,
11 INSTRUMENT CREATING A POWER OF ATTORNEY, OR OTHER DISPOSITIVE OR
12 NOMINATIVE INSTRUMENT.

13 (15) "INFORMATION" MEANS DATA, TEXT, IMAGES, VIDEOS,
14 SOUNDS, CODES, COMPUTER PROGRAMS, SOFTWARE, DATABASES, OR THE
15 LIKE.

16 (16) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
17 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
18 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
19 LEGAL ENTITY.

20 (17) "PERSONAL REPRESENTATIVE" MEANS AN EXECUTOR,
21 ADMINISTRATOR, SPECIAL ADMINISTRATOR, OR PERSON THAT PERFORMS
22 SUBSTANTIALLY THE SAME FUNCTION UNDER THE LAWS OF THIS STATE.

23 (18) "POWER OF ATTORNEY" MEANS A RECORD THAT GRANTS AN
24 AGENT AUTHORITY TO ACT IN THE PLACE OF A PRINCIPAL.

25 (19) "PRINCIPAL" MEANS AN INDIVIDUAL WHO GRANTS AUTHORITY
26 TO AN AGENT IN A POWER OF ATTORNEY.

27 (20) "PROTECTED PERSON" MEANS AN INDIVIDUAL FOR WHOM A

1 CONSERVATOR HAS BEEN APPOINTED. THE TERM INCLUDES AN INDIVIDUAL
2 FOR WHOM AN APPLICATION FOR THE APPOINTMENT OF A CONSERVATOR
3 IS PENDING.

4 (21) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
5 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
6 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

7 (22) "REMOTE COMPUTING SERVICE" MEANS A CUSTODIAN THAT
8 PROVIDES TO AN ACCOUNT HOLDER COMPUTER PROCESSING SERVICES OR
9 THE STORAGE OF DIGITAL ASSETS BY MEANS OF AN ELECTRONIC
10 COMMUNICATIONS SYSTEM, AS DEFINED IN 18 U.S.C. SEC. 2510 (14), AS
11 AMENDED.

12 (23) "TERMS-OF-SERVICE AGREEMENT" MEANS AN AGREEMENT
13 THAT CONTROLS THE RELATIONSHIP BETWEEN AN ACCOUNT HOLDER AND
14 A CUSTODIAN.

15 (24) "TRUSTEE" MEANS A FIDUCIARY WITH LEGAL TITLE TO
16 PROPERTY PURSUANT TO AN AGREEMENT OR DECLARATION THAT CREATES
17 A BENEFICIAL INTEREST IN ANOTHER. THE TERM INCLUDES A SUCCESSOR
18 TRUSTEE.

19 (25) "WILL" INCLUDES A CODICIL, A TESTAMENTARY INSTRUMENT
20 THAT ONLY APPOINTS AN EXECUTOR, AND AN INSTRUMENT THAT REVOKES
21 OR REVISES A TESTAMENTARY INSTRUMENT.

22 **15-1-1503. Applicability.** (1) THIS PART 15 APPLIES TO:

23 (a) A FIDUCIARY OR AGENT ACTING UNDER A WILL OR POWER OF
24 ATTORNEY EXECUTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS
25 PART 15;

26 (b) A PERSONAL REPRESENTATIVE ACTING FOR A DECEDENT WHO
27 DIED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 15;

1 (c) A CONSERVATORSHIP PROCEEDING, WHETHER PENDING IN A
2 COURT OR COMMENCED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF
3 THIS PART 15; AND

4 (d) A TRUSTEE ACTING UNDER A TRUST CREATED BEFORE, ON, OR
5 AFTER THE EFFECTIVE DATE OF THIS PART 15.

6 (2) THIS PART 15 DOES NOT APPLY TO A DIGITAL ASSET OF AN
7 EMPLOYER USED BY AN EMPLOYEE IN THE ORDINARY COURSE OF THE
8 EMPLOYER'S BUSINESS.

9 **15-1-1504. Access by personal representative to digital asset**
10 **of decedent.** (1) SUBJECT TO SECTION 15-1-1508 (2), AND UNLESS
11 OTHERWISE ORDERED BY THE COURT OR PROVIDED IN THE WILL OF A
12 DECEDENT, THE PERSONAL REPRESENTATIVE OF THE DECEDENT HAS THE
13 RIGHT TO ACCESS:

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

17 (b) ANY CATALOG OF ELECTRONIC COMMUNICATIONS SENT OR
18 RECEIVED BY THE DECEDENT; AND

19 (c) ANY OTHER DIGITAL ASSET IN WHICH THE DECEDENT HAD A
20 RIGHT OR INTEREST AT DEATH.

21 **15-1-1505. Access by conservator to digital asset of protected**
22 **person.** (1) SUBJECT TO SECTION 15-1-1508 (2), THE COURT, AFTER AN
23 OPPORTUNITY FOR HEARING UNDER ARTICLE 14 OR 14.5 OF THIS TITLE,
24 MAY GRANT A CONSERVATOR THE RIGHT TO ACCESS:

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

1 (b) ANY CATALOGUE OF ELECTRONIC COMMUNICATIONS SENT OR
2 RECEIVED BY THE PROTECTED PERSON; AND

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

5 **15-1-1506. Access by agent to digital asset of principal.** (1) TO
6 THE EXTENT A POWER OF ATTORNEY EXPRESSLY GRANTS AN AGENT
7 AUTHORITY OVER THE CONTENT OF AN ELECTRONIC COMMUNICATION OF
8 THE PRINCIPAL, AND EXCEPT AS DESCRIBED IN SECTION 15-1-1508 (2), THE
9 AGENT HAS THE RIGHT TO ACCESS THE CONTENT OF AN ELECTRONIC
10 COMMUNICATION THAT THE CUSTODIAN IS PERMITTED TO DISCLOSE UNDER
11 THE "ELECTRONIC COMMUNICATIONS PRIVACY ACT", 18 U.S.C. SEC.
12 2702(b), AS AMENDED.

13 (2) EXCEPT AS DESCRIBED IN SECTION 15-1-1508 (2), AND UNLESS
14 OTHERWISE ORDERED BY THE COURT OR PROVIDED BY A POWER OF
15 ATTORNEY, AN AGENT HAS THE RIGHT TO ACCESS:

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

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

20 **15-1-1507. Access by trustee to digital asset.** (1) EXCEPT AS
21 DESCRIBED IN SECTION 15-1-1508 (2), AND UNLESS OTHERWISE ORDERED
22 BY THE COURT OR PROVIDED IN A TRUST, A TRUSTEE THAT IS AN ORIGINAL
23 ACCOUNT HOLDER HAS THE RIGHT TO ACCESS ANY DIGITAL ASSET HELD IN
24 TRUST, INCLUDING ANY CATALOG OF ELECTRONIC COMMUNICATIONS OF
25 THE TRUSTEE AND THE CONTENT OF AN ELECTRONIC COMMUNICATION.

26 (2) EXCEPT AS DESCRIBED IN SECTION 15-1-1508 (2), AND UNLESS
27 OTHERWISE ORDERED BY THE COURT OR PROVIDED IN A TRUST, A TRUSTEE

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

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

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

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

9 **15-1-1508. Fiduciary authority.** (1) A FIDUCIARY THAT IS AN
10 ACCOUNT HOLDER OR THAT HAS THE RIGHT UNDER THIS PART 15 TO
11 ACCESS A DIGITAL ASSET OF AN ACCOUNT HOLDER:

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

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

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

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

1 ACCOUNT HOLDER'S ASSENT TO OTHER PROVISIONS OF THE AGREEMENT:

2 (a) THE PROVISION IS VOID AS CONTRARY TO THE STRONG PUBLIC
3 POLICY OF THIS STATE; AND

4 (b) THE FIDUCIARY'S ACCESS UNDER THIS PART 15 TO A DIGITAL
5 ASSET DOES NOT VIOLATE THE TERMS-OF-SERVICE AGREEMENT EVEN IF
6 THE AGREEMENT REQUIRES NOTICE OF A CHANGE IN THE ACCOUNT
7 HOLDER'S STATUS.

8 (3) A CHOICE-OF-LAW PROVISION IN A TERMS-OF-SERVICE
9 AGREEMENT IS UNENFORCEABLE AGAINST A FIDUCIARY ACTING UNDER
10 THIS PART 15 TO THE EXTENT THE PROVISION DESIGNATES LAW THAT
11 ENFORCES A LIMITATION ON A FIDUCIARY'S ACCESS TO A DIGITAL ASSET,
12 AND THE LIMITATION IS VOID UNDER SUBSECTION (2) OF THIS SECTION.

13 (4) AS TO TANGIBLE PERSONAL PROPERTY CAPABLE OF RECEIVING,
14 STORING, PROCESSING, OR SENDING A DIGITAL ASSET, A FIDUCIARY WITH
15 AUTHORITY OVER THE PROPERTY OF A DECEDENT, PROTECTED PERSON,
16 PRINCIPAL, OR SETTLOR:

17 (a) HAS THE RIGHT TO ACCESS THE PROPERTY AND ANY DIGITAL
18 ASSET STORED IN IT; AND

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

22 **15-1-1509. Compliance.** (1) IF A FIDUCIARY WITH A RIGHT UNDER
23 THIS PART 15 TO ACCESS A DIGITAL ASSET OF AN ACCOUNT HOLDER
24 COMPLIES WITH SUBSECTION (2) OF THIS SECTION, THE CUSTODIAN SHALL
25 COMPLY WITH THE FIDUCIARY'S REQUEST IN A RECORD FOR:

26 (a) ACCESS TO THE ASSET;

27 (b) CONTROL OF THE ASSET; AND

1 (c) A COPY OF THE ASSET TO THE EXTENT PERMITTED BY
2 COPYRIGHT LAW.

3 (2) (a) IF A REQUEST UNDER SUBSECTION (1) OF THIS SECTION IS
4 MADE BY A PERSONAL REPRESENTATIVE WITH THE RIGHT OF ACCESS
5 UNDER SECTION 15-1-1504, THE REQUEST MUST BE ACCOMPANIED BY:

6 (I) A CERTIFIED COPY OF THE LETTER OF APPOINTMENT OF THE
7 REPRESENTATIVE; OR

8 (II) A SMALL-ESTATE AFFIDAVIT OR COURT ORDER.

9 (b) IF A REQUEST UNDER SUBSECTION (1) OF THIS SECTION IS MADE
10 BY A CONSERVATOR WITH THE RIGHT OF ACCESS UNDER SECTION
11 15-1-1505, THE REQUEST MUST BE ACCOMPANIED BY A CERTIFIED COPY OF
12 THE COURT ORDER THAT GIVES THE CONSERVATOR AUTHORITY OVER THE
13 DIGITAL ASSET.

14 (c) IF A REQUEST UNDER SUBSECTION (1) OF THIS SECTION IS MADE
15 BY AN AGENT WITH THE RIGHT OF ACCESS UNDER SECTION 15-1-1506, THE
16 REQUEST MUST BE ACCOMPANIED BY AN ORIGINAL OR A COPY OF THE
17 POWER OF ATTORNEY THAT AUTHORIZES THE AGENT TO EXERCISE
18 AUTHORITY OVER THE DIGITAL ASSET AND A CERTIFICATION OF THE
19 AGENT, UNDER PENALTY OF PERJURY, THAT THE POWER OF ATTORNEY IS
20 IN EFFECT.

21 (d) IF A REQUEST UNDER SUBSECTION (1) OF THIS SECTION IS MADE
22 BY A TRUSTEE WITH THE RIGHT OF ACCESS UNDER SECTION 15-1-1507, THE
23 REQUEST MUST BE ACCOMPANIED BY A CERTIFIED COPY OF THE TRUST
24 INSTRUMENT.

25 (3) A CUSTODIAN SHALL COMPLY WITH A REQUEST MADE UNDER
26 SUBSECTION (1) OF THIS SECTION NOT LATER THAN SIXTY DAYS AFTER
27 RECEIPT. IF THE CUSTODIAN FAILS TO COMPLY, THE FIDUCIARY MAY APPLY

1 TO THE COURT FOR AN ORDER DIRECTING COMPLIANCE.

2 (4) AS DESCRIBED IN PARAGRAPH (d) OF SUBSECTION (2) OF THIS
3 SECTION, INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT, A
4 TRUSTEE MAY PROVIDE A CERTIFICATION OF TRUST. THE CERTIFICATION:

5 (a) MUST CONTAIN THE FOLLOWING INFORMATION:

6 (I) A STATEMENT THAT THE TRUST EXISTS AND THE DATE THE
7 TRUST INSTRUMENT WAS EXECUTED;

8 (II) THE IDENTITY OF THE SETTLOR;

9 (III) THE IDENTITY AND ADDRESS OF THE TRUSTEE;

10 (IV) A STATEMENT THAT THERE IS NOTHING INCONSISTENT IN THE
11 TRUST WITH RESPECT TO THE TRUSTEE'S POWERS OVER DIGITAL ASSETS;

12 (V) A STATEMENT INDICATING WHETHER THE TRUST IS REVOCABLE
13 AND, IF SO, THE IDENTITY OF ANY PERSON HOLDING A POWER TO REVOKE
14 THE TRUST;

15 (VI) A STATEMENT INDICATING WHETHER A COTRUSTEE HAS
16 AUTHORITY TO SIGN OR OTHERWISE AUTHENTICATE; AND

17 (VII) A STATEMENT INDICATING WHETHER ALL OR FEWER THAN
18 ALL COTRUSTEES ARE REQUIRED TO EXERCISE POWERS OF THE TRUSTEE;

19 (b) MUST BE SIGNED OR OTHERWISE AUTHENTICATED BY A
20 TRUSTEE;

21 (c) MUST STATE THAT THE TRUST HAS NOT BEEN REVOKED,
22 MODIFIED, OR AMENDED IN A MANNER THAT WOULD CAUSE THE
23 REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST TO BE
24 INCORRECT; AND

25 (d) NEED NOT CONTAIN THE DISPOSITIVE TERMS OF THE TRUST.

26 (5) A CUSTODIAN THAT RECEIVES A CERTIFICATION UNDER
27 SUBSECTION (4) OF THIS SECTION MAY REQUIRE THE TRUSTEE TO PROVIDE

1 COPIES OF EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER
2 AMENDMENTS DESIGNATING THE TRUSTEE AND CONFERRING ON THE
3 TRUSTEE THE POWER TO ACT IN THE PENDING TRANSACTION.

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

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

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

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

23 **15-1-1510. Custodian immunity.** A CUSTODIAN AND ITS
24 OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE FROM LIABILITY FOR AN
25 ACT OR OMISSION DONE IN GOOD FAITH IN COMPLIANCE WITH THIS PART
26 15.

27 **15-1-1511. Uniformity of application and construction.** IN

1 APPLYING AND CONSTRUING THIS UNIFORM ACT, COURTS SHALL GIVE
2 CONSIDERATION TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
3 RESPECT TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

4 **15-1-1512. Relation to "Electronic Signatures in Global and**
5 **National Commerce Act"**. THIS PART 15 MODIFIES, LIMITS, OR
6 SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
7 COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY,
8 LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC.
9 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
10 DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003(b).

11 **15-1-1513. Severability.** IF ANY PROVISION OF THIS PART 15 OR
12 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
13 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
14 THIS PART 15 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
15 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
16 PART 15 ARE SEVERABLE.

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

19 **2-5-102. Inclusions - nonstatutory.** (13) THE REVISOR OF
20 STATUTES SHALL INCLUDE IN THE PUBLICATION OF THE "COLORADO
21 UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT", AS
22 NONSTATUTORY MATTER, FOLLOWING EACH SECTION OF THE ARTICLE, THE
23 FULL TEXT OF THE OFFICIAL COMMENTS TO THAT SECTION CONTAINED IN
24 THE OFFICIAL VOLUME CONTAINING THE 2014 OFFICIAL TEXT OF THE
25 "UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT" ISSUED BY THE
26 NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS,
27 WITH ANY CHANGES IN THE OFFICIAL COMMENTS OR COLORADO

1 COMMENTS TO CORRESPOND TO COLORADO CHANGES IN THE UNIFORM
2 ACT. THE REVISOR OF STATUTES SHALL PREPARE THE COMMENTS AND
3 APPROVE THEM FOR PUBLICATION BY THE COMMITTEE ON LEGAL SERVICES.

4 **SECTION 3. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2016 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
1.22.15

DRAFT

LLS NO. 15-0668.01 Richard Sweetman x4333

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Substitute Decision-making Docs Act"
DEADLINES: Finalize by: 26 JAN 2015 File by: 28 JAN 2015

A BILL FOR AN ACT

101 CONCERNING THE "COLORADO UNIFORM SUBSTITUTE
102 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/bills/summaries>.)

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

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 23 to title
3 15 as follows:

4 *<{Does this new Act belong under an existing article of the*
5 *Probate Code (i.e., articles 10-17 of title 15)? If so, where? For now, I*
6 *am placing it outside the probate code as a new article 23 under title*
7 *15.}>*

8 **ARTICLE 23**

9 **Substitute Decision-making Documents**

10 **15-23-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
11 BE CITED AS THE "COLORADO UNIFORM RECOGNITION OF SUBSTITUTE
12 DECISION-MAKING DOCUMENTS ACT".

13 **15-23-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
14 CONTEXT REQUIRES OTHERWISE:

15 (1) "DECISION-MAKER" MEANS A PERSON AUTHORIZED TO ACT FOR
16 AN INDIVIDUAL UNDER A SUBSTITUTE DECISION-MAKING DOCUMENT,
17 WHETHER DENOMINATED A DECISION-MAKER, AGENT, ATTORNEY-IN-FACT,
18 PROXY, OR REPRESENTATIVE, OR BY ANOTHER TITLE. THE TERM INCLUDES

1 AN ORIGINAL DECISION-MAKER, A CO-DECISION-MAKER, A SUCCESSOR
2 DECISION-MAKER, AND A PERSON TO WHOM A DECISION-MAKER'S
3 AUTHORITY IS DELEGATED.

4 (2) "GOOD FAITH" MEANS HONESTY IN FACT.

5 (3) "HEALTH CARE" MEANS A SERVICE OR PROCEDURE TO
6 MAINTAIN, DIAGNOSE, TREAT, OR OTHERWISE AFFECT AN INDIVIDUAL'S
7 PHYSICAL OR MENTAL CONDITION.

8 (4) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
9 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
10 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
11 LEGAL ENTITY.

12 (5) "PERSONAL CARE" MEANS AN ARRANGEMENT OR SERVICE TO
13 PROVIDE AN INDIVIDUAL SHELTER, FOOD, CLOTHING, TRANSPORTATION,
14 EDUCATION, RECREATION, SOCIAL CONTACT, OR ASSISTANCE WITH THE
15 ACTIVITIES OF DAILY LIVING.

16 (6) "PROPERTY" MEANS ANYTHING THAT MAY BE SUBJECT TO
17 OWNERSHIP, WHETHER REAL OR PERSONAL OR LEGAL OR EQUITABLE, OR
18 ANY INTEREST OR RIGHT THEREIN.

19 (7) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
20 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
21 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

22 (8) "SUBSTITUTE DECISION-MAKING DOCUMENT" MEANS A RECORD
23 CREATED BY AN INDIVIDUAL TO AUTHORIZE A DECISION-MAKER TO ACT
24 FOR THE INDIVIDUAL WITH RESPECT TO PROPERTY, HEALTH CARE, OR
25 PERSONAL CARE.

26 **15-23-103. Validity of substitute decision-making document.**

27 (1) A SUBSTITUTE DECISION-MAKING DOCUMENT FOR PROPERTY

1 EXECUTED OUTSIDE THIS STATE IS VALID IN THIS STATE IF, WHEN THE
2 DOCUMENT WAS EXECUTED, THE EXECUTION COMPLIED WITH THE LAW OF
3 THE JURISDICTION INDICATED IN THE DOCUMENT OR, IF NO JURISDICTION
4 IS INDICATED, THE LAW OF THE JURISDICTION IN WHICH THE DOCUMENT
5 WAS EXECUTED.

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

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

13 (b) THE LAW OF THIS STATE.

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

17 **15-23-104. Meaning and effect of substitute decision-making**
18 **document.** THE MEANING AND EFFECT OF A SUBSTITUTE
19 DECISION-MAKING DOCUMENT AND THE AUTHORITY OF THE
20 DECISION-MAKER ARE DETERMINED BY THE LAW OF THE JURISDICTION
21 INDICATED IN THE DOCUMENT OR, IF NO JURISDICTION IS INDICATED, THE
22 LAW OF THE JURISDICTION IN WHICH THE DOCUMENT WAS EXECUTED.

23 **15-23-105. Reliance on substitute decision-making document.**

24 (1) EXCEPT AS OTHERWISE PROVIDED BY LAW, A PERSON WHO IN GOOD
25 FAITH ACCEPTS A SUBSTITUTE DECISION-MAKING DOCUMENT WITHOUT
26 ACTUAL KNOWLEDGE THAT THE DOCUMENT IS VOID, INVALID, OR
27 TERMINATED, OR THAT THE AUTHORITY OF THE PURPORTED

1 DECISION-MAKER IS VOID, INVALID, OR TERMINATED, MAY ASSUME
2 WITHOUT INQUIRY THAT THE DOCUMENT IS GENUINE, VALID, AND STILL IN
3 EFFECT AND THAT THE DECISION-MAKER'S AUTHORITY IS GENUINE, VALID,
4 AND STILL IN EFFECT.

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

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

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

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

16 **15-23-106. Obligation to accept substitute decision-making**
17 **document.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
18 THIS SECTION OR BY ANOTHER LAW OF THIS STATE, A PERSON WHO IS
19 ASKED TO ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT SHALL
20 ACCEPT WITHIN A REASONABLE TIME A DOCUMENT THAT PURPORTEDLY
21 MEETS THE VALIDITY REQUIREMENTS OF SECTION 15-23-103. THE PERSON
22 MAY NOT REQUIRE AN ADDITIONAL OR DIFFERENT FORM OF DOCUMENT FOR
23 AUTHORITY GRANTED IN THE DOCUMENT PRESENTED.

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

27 (a) THE PERSON OTHERWISE WOULD NOT BE REQUIRED IN THE

1 SAME CIRCUMSTANCES TO ACT IF REQUESTED BY THE INDIVIDUAL WHO
2 EXECUTED THE DOCUMENT;

3 (b) THE PERSON HAS ACTUAL KNOWLEDGE OF THE TERMINATION
4 OF THE DECISION-MAKER'S AUTHORITY OR THE DOCUMENT;

5 (c) THE PERSON'S REQUEST UNDER SECTION 15-23-105 (2) FOR THE
6 DECISION-MAKER'S ASSERTION OF FACT, A TRANSLATION, OR AN OPINION
7 OF COUNSEL IS REFUSED;

8 (d) THE PERSON IN GOOD FAITH BELIEVES THAT THE DOCUMENT IS
9 NOT VALID OR THE DECISION-MAKER DOES NOT HAVE THE AUTHORITY TO
10 REQUEST A PARTICULAR TRANSACTION OR ACTION; OR

11 (e) THE PERSON MAKES, OR HAS ACTUAL KNOWLEDGE THAT
12 ANOTHER PERSON HAS MADE, A REPORT TO A LAW ENFORCEMENT AGENCY
13 OR TO A COUNTY DEPARTMENT OF SOCIAL SERVICES STATING A BELIEF
14 THAT THE INDIVIDUAL FOR WHOM A DECISION WILL BE MADE MAY BE
15 SUBJECT TO ABUSE, NEGLECT, EXPLOITATION, OR ABANDONMENT BY THE
16 DECISION-MAKER OR A PERSON ACTING FOR OR WITH THE
17 DECISION-MAKER.

18 (3) A PERSON WHO, IN VIOLATION OF THIS SECTION, REFUSES TO
19 ACCEPT A SUBSTITUTE DECISION-MAKING DOCUMENT IS SUBJECT TO:

20 (a) A COURT ORDER MANDATING ACCEPTANCE OF THE DOCUMENT;
21 AND

22 (b) LIABILITY FOR REASONABLE ATTORNEY'S FEES AND COSTS
23 INCURRED IN AN ACTION OR PROCEEDING THAT MANDATES ACCEPTANCE
24 OF THE DOCUMENT.

25 **15-23-107. Remedies under other law.** THE REMEDIES UNDER
26 THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT ABROGATE ANY OTHER
27 RIGHT OR REMEDY AVAILABLE UNDER THE LAW OF THIS STATE.

1 **15-23-108. Uniformity of application and construction.** IN
2 APPLYING AND CONSTRUING THIS UNIFORM ACT, COURTS SHALL GIVE
3 CONSIDERATION TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH
4 RESPECT TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

5 **15-23-109. Relation to the "Electronic Signatures in Global
6 and National Commerce Act".** THIS ARTICLE MODIFIES, LIMITS, OR
7 SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
8 COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT
9 MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.
10 SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
11 NOTICES DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SECTION
12 7003(b).

13 **15-23-110. Applicability.** THIS ARTICLE APPLIES TO A SUBSTITUTE
14 DECISION-MAKING DOCUMENT CREATED BEFORE, ON, OR AFTER THE
15 EFFECTIVE DATE OF THIS ARTICLE.

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

18 **2-5-102. Inclusions - nonstatutory.** (13) THE REVISOR OF
19 STATUTES SHALL INCLUDE IN THE PUBLICATION OF THE "COLORADO
20 UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS
21 ACT", AS NONSTATUTORY MATTER, FOLLOWING EACH SECTION OF THE
22 ARTICLE, THE FULL TEXT OF THE OFFICIAL COMMENTS TO THAT SECTION
23 CONTAINED IN THE OFFICIAL VOLUME CONTAINING THE 2014 OFFICIAL
24 TEXT OF THE "UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING
25 DOCUMENTS ACT" ISSUED BY THE NATIONAL CONFERENCE OF
26 COMMISSIONERS ON UNIFORM STATE LAWS, WITH ANY CHANGES IN THE
27 OFFICIAL COMMENTS OR COLORADO COMMENTS TO CORRESPOND TO

1 COLORADO CHANGES IN THE UNIFORM ACT. THE REVISOR OF STATUTES
2 SHALL PREPARE THE COMMENTS AND APPROVE THEM FOR PUBLICATION BY
3 THE COMMITTEE ON LEGAL SERVICES.

4 **SECTION 3. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2016 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

DRAFT
1.20.15

DRAFT

LLS NO. 15-0669.01 Bart Miller x2173

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Colorado Uniform Voidable Transactions Act"
DEADLINES: Finalize by: 26 JAN 2015 File by: 28 JAN 2015

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://www.leg.state.co.us/bills summaries>.)

Colorado Commission on Uniform State Laws. In 2014 the

*Capital letters 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 "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.

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

1 follows:

2 **38-8-101. Short title.** This article, ~~shall be known and may be~~
3 WHICH WAS FORMERLY cited as the "Colorado Uniform Fraudulent
4 Transfer Act", IS KNOWN AND MAY BE CITED AS THE "COLORADO
5 UNIFORM VOIDABLE TRANSACTIONS ACT".

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

10 **38-8-102. Definitions.** As used in this article, unless the context
11 otherwise requires:

12 (1) "Affiliate" means:

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

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

19 (b) A corporation, twenty percent or more of whose outstanding
20 voting securities are directly or indirectly owned, controlled, or held with
21 power to vote, by the debtor or a person ~~who~~ THAT directly or indirectly
22 owns, controls, or holds with power to vote, twenty percent or more of the
23 outstanding voting securities of the debtor, other than a person ~~who~~ THAT
24 holds the securities:

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

27 (d) A person ~~who~~ THAT operates the debtor's business under a

1 lease or other agreement or controls substantially all of the debtor's assets.

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

6 (7.5) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING
7 ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL,
8 ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

9 (9.5) "ORGANIZATION" MEANS A PERSON OTHER THAN AN
10 INDIVIDUAL.

11 (10) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
12 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
13 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
14 LEGAL ENTITY.

15 (11.5) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
16 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
17 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

18 (12.5) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
19 ADOPT A RECORD:

20 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

21 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
22 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

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

25 **38-8-103. Insolvency.** (1) A debtor is insolvent if, AT A FAIR
26 VALUATION, the sum of the debtor's debts is greater than ~~at~~ THE SUM of
27 the debtor's assets. ~~at a fair valuation.~~

1 (2) A debtor ~~who~~ THAT is generally not paying ~~his~~ THE DEBTOR'S
2 debts as they become due OTHER THAN AS A RESULT OF A BONA FIDE
3 DISPUTE is presumed to be insolvent. THE PRESUMPTION IMPOSES ON THE
4 PARTY AGAINST WHICH THE PRESUMPTION IS DIRECTED THE BURDEN OF
5 PROVING THAT THE NONEXISTENCE OF INSOLVENCY IS MORE PROBABLE
6 THAN ITS EXISTENCE.

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

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

14 **38-8-104. Value.** (2) For the purposes of sections ~~38-8-105~~
15 38-8-105 (1) (b) and 38-8-106, a person gives a reasonably equivalent
16 value if the person acquires an interest of the debtor in an asset pursuant
17 to a regularly conducted, noncollusive sale, foreclosing on assets subject
18 to a lien, or pursuant to the execution of a power of sale for the
19 acquisition or disposition of the interest of the debtor upon default under
20 a mortgage, deed of trust, or security agreement.

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

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

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

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

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

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

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

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

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

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

1 debtor was insolvent.

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

6 **SECTION 7.** In Colorado Revised Statutes, 38-8-107, **amend** (1)

7 (a) (I), (4), and (5) (b) as follows:

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

9 (1) For the purposes of this article:

10 (a) A transfer is made:

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

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

19 (5) An obligation is incurred:

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

23 **SECTION 8.** In Colorado Revised Statutes, 38-8-108, **amend** (1)

24 (b) and (1) (c) as follows:

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

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

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

20 **SECTION 9.** In Colorado Revised Statutes, 38-8-109, **amend** (1),
21 (2), (4) (a), (4) (b), (5) (b), and (6) (a); and **add** (7) and (8) as follows:

22 **38-8-109. Defenses, liability, and protection of transferee or**
23 **obligee.** (1) A transfer or obligation is not voidable under section
24 38-8-105 (1) (a) against a person ~~who~~ THAT took in good faith and for a
25 reasonably equivalent value GIVEN THE DEBTOR or against any subsequent
26 transferee or obligee.

27 (2) TO THE EXTENT A TRANSFER IS AVOIDABLE IN AN ACTION BY A

1 CREDITOR UNDER SECTION 38-8-108 (1) (a), THE FOLLOWING RULES APPLY:

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

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

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

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

14 ~~(B)~~ (B) AN IMMEDIATE OR MEDIATE GOOD-FAITH TRANSFEREE OF
15 A PERSON DESCRIBED IN SUB-SUBPARAGRAPH (a) OF THIS SUBPARAGRAPH
16 (II).

17 (b) RECOVERY PURSUANT TO SECTION 38-8-108 (1) (A) OR (2) OF
18 OR FROM THE ASSET TRANSFERRED OR ITS PROCEEDS, BY LEVY OR
19 OTHERWISE, IS AVAILABLE ONLY AGAINST A PERSON DESCRIBED IN
20 SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (a) OF THIS SUBSECTION (1).

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

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

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

27 (5) A transfer is not voidable under section 38-8-105 (1) (b) or

1 38-8-106 if the transfer results from:

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

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

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

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

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

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

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

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

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

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

27 **38-8-110. Extinguishment of claim for relief.** (1) A ~~cause of~~

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

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

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

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

12 **SECTION 11.** In Colorado Revised Statutes, **add** 38-8-110.3,
13 38-8-110.5, and 38-8-113 as follows:

14 **38-8-110.3. Governing law.** (1) IN THIS SECTION, THE
15 FOLLOWING RULES DETERMINE A DEBTOR'S LOCATION:

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

18 (b) A DEBTOR THAT IS AN ORGANIZATION AND HAS ONLY ONE
19 PLACE OF BUSINESS IS LOCATED AT ITS PLACE OF BUSINESS.

20 (c) A DEBTOR THAT IS AN ORGANIZATION AND HAS MORE THAN
21 ONE PLACE OF BUSINESS IS LOCATED AT ITS CHIEF EXECUTIVE OFFICE.

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

26 **38-8-110.5. Application to series organizations - definitions.**

27 (1) IN THIS SECTION:

1 (a) "PROTECTED SERIES" MEANS AN ARRANGEMENT, HOWEVER
2 DENOMINATED, CREATED BY A SERIES ORGANIZATION THAT, PURSUANT TO
3 THE LAW UNDER WHICH THE SERIES ORGANIZATION IS ORGANIZED, HAS
4 THE CHARACTERISTICS SET FORTH IN SUBSECTION (12.3) OF THIS SECTION.

5 (b) "SERIES ORGANIZATION" MEANS AN ORGANIZATION THAT,
6 PURSUANT TO THE LAW UNDER WHICH IT IS ORGANIZED, HAS THE
7 FOLLOWING CHARACTERISTICS:

8 (I) THE ORGANIC RECORD OF THE ORGANIZATION PROVIDES FOR
9 CREATION BY THE ORGANIZATION OF ONE OR MORE PROTECTED SERIES,
10 HOWEVER DENOMINATED, WITH RESPECT TO SPECIFIED PROPERTY OF THE
11 ORGANIZATION, AND FOR RECORDS TO BE MAINTAINED FOR EACH
12 PROTECTED SERIES THAT IDENTIFY THE PROPERTY OF OR ASSOCIATED WITH
13 THE PROTECTED SERIES.

14 (II) DEBT INCURRED OR EXISTING WITH RESPECT TO THE
15 ACTIVITIES OF, PROPERTY OF, OR ASSOCIATED WITH, A PARTICULAR
16 PROTECTED SERIES IS ENFORCEABLE AGAINST THE PROPERTY OF, OR
17 ASSOCIATED WITH, THE PROTECTED SERIES ONLY AND NOT AGAINST THE
18 PROPERTY OF, OR ASSOCIATED WITH, THE ORGANIZATION OR OTHER
19 PROTECTED SERIES OF THE ORGANIZATION.

20 (III) DEBT INCURRED OR EXISTING WITH RESPECT TO THE
21 ACTIVITIES OR PROPERTY OF THE ORGANIZATION IS ENFORCEABLE AGAINST
22 THE PROPERTY OF THE ORGANIZATION ONLY AND NOT AGAINST THE
23 PROPERTY OF, OR ASSOCIATED WITH A PROTECTED SERIES, OF THE
24 ORGANIZATION. A SERIES ORGANIZATION AND EACH PROTECTED SERIES OF
25 THE ORGANIZATION IS A SEPARATE PERSON FOR PURPOSES OF THIS
26 ARTICLE, EVEN IF FOR OTHER PURPOSES A PROTECTED SERIES IS NOT A
27 PERSON SEPARATE FROM THE ORGANIZATION OR OTHER PROTECTED SERIES

1 OF THE ORGANIZATION.

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

7 **38-8-113. Relation to electronic signatures in federal**
8 **"Electronic Signatures in Global and National Commerce Act"**. THIS
9 ARTICLE MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC
10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC.
11 7001 ET SEQ., BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101
12 (c) OF THAT ACT, 15 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC
13 DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT
14 ACT, 15 U.S.C. SEC. 7003 (b).

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

17 **2-5-102. Inclusions - nonstatutory.** (7) There shall be included
18 in the publication of the ~~"Colorado Uniform Fraudulent Transfer Act"~~
19 "COLORADO UNIFORM VOIDABLE TRANSACTIONS ACT", as nonstatutory
20 matter, following each section of the article, the full text of the official
21 comments to that section contained in the official volume containing the
22 1984 official text of the ~~"Uniform Fraudulent Transfer Act"~~ "COLORADO
23 UNIFORM VOIDABLE TRANSACTIONS ACT" issued by the national
24 conference of commissioners on uniform state laws, INCLUDING CHANGES
25 TO THE OFFICIAL COMMENTS MADE BY THE 2014 AMENDMENTS TO THE
26 UNIFORM ACT, with any changes in the official comments or Colorado
27 comments to correspond to Colorado changes in the uniform act. The

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

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

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

UNEDITED
UNREVISED
DRAFT
1.21.15

DRAFT

LLS NO. 15-0670.01 Duane Gall x4335

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Law On Liens For Common Interest HOA Dues"
DEADLINES: File by: 1/28/2015

A BILL FOR AN ACT

101 CONCERNING THE LIEN FOR ASSESSMENTS OF A UNIT OWNERS'
102 ASSOCIATION UNDER THE "COLORADO COMMON INTEREST
103 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/bills summaries>.)

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.

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

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

4 **38-33.3-316. Lien for sums due association - enforcement.** (1) THE
5 ASSOCIATION HAS A STATUTORY LIEN ON A UNIT FOR ANY ASSESSMENT
6 ATTRIBUTABLE TO THAT UNIT OR FINES IMPOSED AGAINST ITS UNIT OWNER. ANY
7 PRIORITY ACCORDED TO THE ASSOCIATION'S LIEN UNDER THIS SECTION IS A
8 PRIORITY IN RIGHT AND NOT MERELY A PRIORITY IN PAYMENT FROM THE
9 PROCEEDS OF THE SALE OF THE UNIT BY A COMPETING LIENHOLDER OR
10 ENCUMBRANCER. UNLESS THE DECLARATION PROVIDES OTHERWISE,
11 REASONABLE ATTORNEY'S FEES AND COSTS, OTHER FEES, CHARGES, LATE
12 CHARGES, FINES, AND INTEREST CHARGED PURSUANT TO SECTION 38-33.3-302
13 (1) (j), (1) (k), AND (1) (l), SECTION 38-33.3-313 (6), AND SECTION 38-33.3-315
14 (2) AND ANY OTHER SUMS DUE TO THE ASSOCIATION UNDER THE DECLARATION,
15 THIS ARTICLE, OR AS A RESULT OF AN ADMINISTRATIVE, ARBITRATION,
16 MEDIATION, OR JUDICIAL DECISION ARE ENFORCEABLE IN THE SAME MANNER AS
17 UNPAID ASSESSMENTS UNDER THIS SECTION. IF AN ASSESSMENT IS PAYABLE IN
18 INSTALLMENTS, THE LIEN IS FOR THE FULL AMOUNT OF THE ASSESSMENT FROM
19 THE TIME THE FIRST INSTALLMENT THEREOF BECOMES DUE. A LIEN UNDER THIS
20 SECTION IS NOT SUBJECT TO EXEMPTION UNDER PART 2 OF ARTICLE 41 OF THIS
21 TITLE. <*homestead exemption*>

22 (2) A LIEN UNDER THIS SECTION HAS PRIORITY OVER ALL OTHER LIENS
23 AND ENCUMBRANCES ON A UNIT EXCEPT:

24 (a) LIENS AND ENCUMBRANCES RECORDED BEFORE THE RECORDATION
25 OF THE DECLARATION AND, IN A COOPERATIVE, LIENS AND ENCUMBRANCES

1 THAT THE ASSOCIATION CREATES, ASSUMES, OR TAKES SUBJECT TO;

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

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

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

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

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

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

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

25 (5) RECORDING OF THE DECLARATION CONSTITUTES RECORD NOTICE
26 AND PERFECTION OF THE LIEN. NO FURTHER RECORDATION OF ANY CLAIM OF
27 LIEN FOR ASSESSMENT UNDER THIS SECTION IS REQUIRED.

1 (6) A LIEN FOR UNPAID ASSESSMENTS IS EXTINGUISHED UNLESS
2 PROCEEDINGS TO ENFORCE THE LIEN ARE INSTITUTED WITHIN THREE YEARS
3 AFTER THE FULL AMOUNT OF THE ASSESSMENTS BECOMES DUE.

4 (7) THIS SECTION DOES NOT PROHIBIT AN ACTION BY AN ASSOCIATION
5 AGAINST A UNIT OWNER TO RECOVER PAST DUE SUMS FOR WHICH SUBSECTION
6 (1) OF THIS SECTION CREATES A LIEN OR PROHIBIT AN ASSOCIATION FROM
7 TAKING A DEED IN LIEU OF FORECLOSURE.

8 (8) A JUDGMENT OR DECREE IN ANY ACTION BROUGHT UNDER THIS
9 SECTION MUST INCLUDE COSTS AND REASONABLE ATTORNEY'S FEES FOR THE
10 PREVAILING PARTY.

11 (9) THE ASSOCIATION, UPON REQUEST MADE IN A RECORD, SHALL
12 FURNISH TO A UNIT OWNER A STATEMENT SETTING FORTH THE AMOUNT OF
13 UNPAID ASSESSMENTS AGAINST THE UNIT. IF THE UNIT OWNER'S INTEREST IS
14 REAL ESTATE, THE STATEMENT MUST BE IN RECORDABLE FORM. THE STATEMENT
15 MUST BE FURNISHED WITHIN TEN BUSINESS DAYS AFTER RECEIPT OF THE
16 REQUEST AND IS BINDING ON THE ASSOCIATION, THE EXECUTIVE BOARD, AND
17 EVERY UNIT OWNER.

18 (10) ON NONPAYMENT OF AN ASSESSMENT ON A UNIT, THE ASSOCIATION
19 IS ENTITLED TO OBTAIN POSSESSION OF THE UNIT UNDER ARTICLE 40 OF TITLE
20 13, C.R.S. <*forcible entry and detainer*>

21 (11) THE ASSOCIATION'S LIEN MAY BE FORECLOSED AS PROVIDED IN
22 THIS SUBSECTION AND SUBSECTION (16) OF THIS SECTION:

23 (a) IN A CONDOMINIUM OR PLANNED COMMUNITY, THE ASSOCIATION'S
24 LIEN MUST BE FORECLOSED IN LIKE MANNER AS A MORTGAGE ON REAL ESTATE;

25 (b) IN A COOPERATIVE WHOSE UNIT OWNERS' INTERESTS IN THE UNITS
26 ARE REAL ESTATE, AS DETERMINED IN ACCORDANCE WITH SECTION 38-33.3-105,
27 THE ASSOCIATION'S LIEN MUST BE FORECLOSED IN LIKE MANNER AS A

1 MORTGAGE ON REAL ESTATE; AND

2 (c) IN A COOPERATIVE WHOSE UNIT OWNERS' INTERESTS IN THE UNITS
3 ARE PERSONAL PROPERTY, AS DETERMINED IN ACCORDANCE WITH SECTION
4 38-33.3-105, THE ASSOCIATION'S LIEN MUST BE FORECLOSED IN LIKE MANNER
5 AS A SECURITY INTEREST UNDER THE "UNIFORM COMMERCIAL CODE, SECURED
6 TRANSACTIONS", ARTICLE 9 OF TITLE 4, C.R.S.

7 (12) IF THE UNIT OWNER'S INTEREST IN A UNIT IN A COOPERATIVE IS
8 REAL ESTATE, THE FOLLOWING REQUIREMENTS APPLY: <{Note: This subsection
9 was set off by brackets; not sure why. (DHG)}>

10 (a) THE ASSOCIATION, UPON NONPAYMENT OF ASSESSMENTS AND
11 COMPLIANCE WITH THIS SUBSECTION, MAY SELL THAT UNIT AT A PUBLIC SALE
12 OR BY PRIVATE NEGOTIATION AND AT ANY TIME, DATE, AND PLACE. THE
13 ASSOCIATION SHALL GIVE TO THE UNIT OWNER AND ANY LESSEE OF THE UNIT
14 OWNER REASONABLE NOTICE IN A RECORD OF THE TIME, DATE, AND PLACE OF
15 ANY PUBLIC SALE OR, IF A PRIVATE SALE IS INTENDED, OF THE INTENTION OF
16 ENTERING INTO A CONTRACT TO SELL AND OF THE TIME AND DATE AFTER WHICH
17 A PRIVATE DISPOSITION MAY BE MADE. THE SAME NOTICE MUST ALSO BE SENT
18 TO ANY OTHER PERSON THAT HAS A RECORDED INTEREST IN THE UNIT WHICH
19 WOULD BE CUT OFF BY THE SALE, BUT ONLY IF THE RECORDED INTEREST WAS ON
20 RECORD SEVEN WEEKS BEFORE THE DATE SPECIFIED IN THE NOTICE AS THE DATE
21 OF ANY PUBLIC SALE OR SEVEN WEEKS BEFORE THE DATE SPECIFIED IN THE
22 NOTICE AS THE DATE AFTER WHICH A PRIVATE SALE MAY BE MADE. THE NOTICES
23 REQUIRED BY THIS SUBSECTION MAY BE SENT TO ANY ADDRESS REASONABLE IN
24 THE CIRCUMSTANCES. A SALE MAY NOT BE HELD UNTIL FIVE WEEKS AFTER THE
25 SENDING OF THE NOTICE. THE ASSOCIATION MAY BUY AT ANY PUBLIC SALE AND,
26 IF THE SALE IS CONDUCTED BY A FIDUCIARY OR OTHER PERSON NOT RELATED TO
27 THE ASSOCIATION, AT A PRIVATE SALE.

1 (b) UNLESS OTHERWISE AGREED, THE UNIT OWNER IS LIABLE FOR ANY
2 DEFICIENCY IN A FORECLOSURE SALE.

3 (c) THE PROCEEDS OF A FORECLOSURE SALE MUST BE APPLIED IN THE
4 FOLLOWING ORDER:

5 (I) THE REASONABLE EXPENSES OF SALE;

6 (II) THE REASONABLE EXPENSES OF SECURING POSSESSION BEFORE
7 SALE; THE REASONABLE EXPENSES OF HOLDING, MAINTAINING, AND PREPARING
8 THE UNIT FOR SALE, INCLUDING PAYMENT OF TAXES AND OTHER
9 GOVERNMENTAL CHARGES AND PREMIUMS ON INSURANCE; AND, TO THE EXTENT
10 PROVIDED FOR BY AGREEMENT BETWEEN THE ASSOCIATION AND THE UNIT
11 OWNER, REASONABLE ATTORNEY'S FEES, COSTS, AND OTHER LEGAL EXPENSES
12 INCURRED BY THE ASSOCIATION;

13 (III) SATISFACTION OF THE ASSOCIATION'S LIEN;

14 (IV) SATISFACTION IN THE ORDER OF PRIORITY OF ANY SUBORDINATE
15 CLAIM OF RECORD; AND

16 (V) REMITTANCE OF ANY EXCESS TO THE UNIT OWNER.

17 (d) A GOOD FAITH PURCHASER FOR VALUE ACQUIRES THE UNIT FREE OF
18 THE ASSOCIATION'S DEBT THAT GAVE RISE TO THE LIEN UNDER WHICH THE
19 FORECLOSURE SALE OCCURRED AND ANY SUBORDINATE INTEREST, EVEN
20 THOUGH THE ASSOCIATION OR OTHER PERSON CONDUCTING THE SALE FAILED TO
21 COMPLY WITH THIS SECTION. THE PERSON CONDUCTING THE SALE SHALL
22 EXECUTE A CONVEYANCE TO THE PURCHASER SUFFICIENT TO CONVEY THE UNIT
23 AND STATING THAT IT IS EXECUTED BY THE PERSON AFTER A FORECLOSURE OF
24 THE ASSOCIATION'S LIEN BY POWER OF SALE AND THAT THE PERSON WAS
25 EMPOWERED TO MAKE THE SALE. SIGNATURE AND TITLE OR AUTHORITY OF THE
26 PERSON SIGNING THE CONVEYANCE AS GRANTOR AND A RECITAL OF THE FACTS
27 OF NONPAYMENT OF THE ASSESSMENT AND OF THE GIVING OF THE NOTICES

1 REQUIRED BY THIS SUBSECTION ARE SUFFICIENT PROOF OF THE FACTS RECITED
2 AND OF THE AUTHORITY TO SIGN. FURTHER PROOF OF AUTHORITY IS NOT
3 REQUIRED EVEN THOUGH THE ASSOCIATION IS NAMED AS GRANTEE IN THE
4 CONVEYANCE.

5 (e) AT ANY TIME BEFORE THE ASSOCIATION HAS DISPOSED OF A UNIT IN
6 A COOPERATIVE OR ENTERED INTO A CONTRACT FOR ITS DISPOSITION UNDER THE
7 POWER OF SALE, THE UNIT OWNERS OR THE HOLDER OF ANY SUBORDINATE
8 SECURITY INTEREST MAY CURE THE UNIT OWNER'S DEFAULT AND PREVENT SALE
9 OR OTHER DISPOSITION BY TENDERING THE PERFORMANCE DUE UNDER THE
10 SECURITY AGREEMENT, INCLUDING ANY AMOUNTS DUE BECAUSE OF EXERCISE
11 OF A RIGHT TO ACCELERATE, PLUS THE REASONABLE EXPENSES OF PROCEEDING
12 TO FORECLOSURE INCURRED TO THE TIME OF TENDER, INCLUDING REASONABLE
13 ATTORNEY'S FEES AND COSTS OF THE CREDITOR.

14 (13) IN AN ACTION BY AN ASSOCIATION TO COLLECT ASSESSMENTS OR
15 TO FORECLOSE A LIEN ON A UNIT UNDER THIS SECTION, THE COURT MAY APPOINT
16 A RECEIVER TO COLLECT ALL SUMS ALLEGED TO BE DUE AND OWING TO A UNIT
17 OWNER BEFORE COMMENCEMENT OR DURING PENDENCY OF THE ACTION. THE
18 RECEIVERSHIP IS GOVERNED BY PART 6 OF ARTICLE 38 OF THIS TITLE. THE COURT
19 MAY ORDER THE RECEIVER TO PAY ANY SUMS HELD BY THE RECEIVER TO THE
20 ASSOCIATION DURING PENDENCY OF THE ACTION TO THE EXTENT OF THE
21 ASSOCIATION'S COMMON EXPENSE ASSESSMENTS BASED ON A PERIODIC BUDGET
22 ADOPTED BY THE ASSOCIATION PURSUANT TO SECTION 38-33.3-315.

23 (14) AN ASSOCIATION MAY NOT COMMENCE AN ACTION TO FORECLOSE
24 A LIEN ON A UNIT UNDER THIS SECTION OR TO EVICT A UNIT OWNER UNDER
25 SUBSECTION (10) OF THIS SECTION UNLESS:

26 (a) THE UNIT OWNER, AT THE TIME THE ACTION IS COMMENCED, OWES
27 A SUM EQUAL TO AT LEAST **THREE** MONTHS <{*current law says 6 months*}> OF

1 COMMON EXPENSE ASSESSMENTS BASED ON THE PERIODIC BUDGET LAST
2 ADOPTED BY THE ASSOCIATION PURSUANT TO SECTION 38-33.3-315 (1) AND THE
3 UNIT OWNER HAS FAILED TO ACCEPT OR COMPLY WITH A PAYMENT PLAN
4 OFFERED BY THE ASSOCIATION; AND

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

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

10 (a) UNPAID ASSESSMENTS;

11 (b) LATE CHARGES;

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

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

16 (16) IF THE ONLY SUMS DUE WITH RESPECT TO A UNIT ARE FINES AND
17 RELATED SUMS IMPOSED AGAINST THE UNIT, A FORECLOSURE ACTION MAY NOT
18 BE COMMENCED AGAINST THE UNIT UNLESS THE ASSOCIATION HAS A JUDGMENT
19 AGAINST THE UNIT OWNER FOR THE FINES AND RELATED SUMS AND HAS
20 PERFECTED A JUDGMENT LIEN AGAINST THE UNIT UNDER ARTICLE 52 OF TITLE
21 13, C.R.S.

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

25 **SECTION 2. Act subject to petition - effective date -**
26 **applicability.** (1) This act takes effect Month dd, year; <{***how much***
27 ***lead time would be appropriate here?***> except that, if a referendum

1 petition is filed pursuant to section 1 (3) of article V of the state
2 constitution against this act or an item, section, or part of this act within
3 the ninety-day period after final adjournment of the general assembly,
4 then the act, item, section, or part will not take effect unless approved by
5 the people at the general election to be held in November 2016 and, in
6 such case, will take effect on the date of the official declaration of the
7 vote thereon by the governor.

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