

104TH GENERAL ASSEMBLY**State of Illinois****2025 and 2026****HB0030**

Introduced 1/9/2025, by Rep. Daniel Didech

SYNOPSIS AS INTRODUCED:

See Index

Amends the Uniform Fraudulent Transfer Act. Changes the short title to the Uniform Voidable Transactions Act. Makes changes to the Act that were recommended by the National Conference of Commissioners on Uniform State Laws in 2014, including: adding definitions for "electronic", "organization", "record", and "sign"; providing that a presumption of insolvency imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence; removing language providing that a partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts; providing that a creditor making a claim for relief has the burden of proving the elements of the claim for relief by a preponderance of the evidence; adding rules to determine the burden of proving matters regarding defenses, liability, and the protection of transferees or obligees; adding rules to determine a debtor's location; providing that a series organization and each protected series of the organization is a separate person, even if for other purposes a protected series is not a person separate from the organization of other protected series of the organization; how the Act relates to the Electronic Signatures in Global and National Commerce Act; and other changes. Makes conforming changes in the Illinois Insurance Code and the Illinois Trust Code.

LRB104 02886 LNS 12896 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 35B-25 and 204 as follows:

6 (215 ILCS 5/35B-25)

7 Sec. 35B-25. Plan of division approval.

8 (a) A division shall not become effective until it is
9 approved by the Director after reasonable notice and a public
10 hearing, if the notice and hearing are deemed by the Director
11 to be in the public interest. Any decision by the Director on
12 whether or not to hold a public hearing on either a plan of
13 division or an amended plan of division may be made
14 independently by the Director. The Director shall hold a
15 public hearing if one is requested by the dividing company. A
16 hearing conducted under this Section shall be conducted in
17 accordance with Article 10 of the Illinois Administrative
18 Procedure Act.

19 (b) The Director shall approve a plan of division unless
20 the Director finds that:

21 (1) the interest of any class of policyholder or
22 shareholder of the dividing company will not be properly
23 protected;

(2) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, would be ineligible to receive a license to do insurance business in this State pursuant to Section 5;

(2.5) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, that will be a member insurer of the Illinois Life and Health Insurance Guaranty Association and that will have policy liabilities allocated to it will not be licensed to do insurance business in each state where such policies were written by the dividing company;

(3) the proposed division violates a provision of the Uniform Voidable Transactions ~~Fraudulent Transfer~~ Act;

(4) the division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing company;

(5) one or more resulting companies will not be solvent upon the consummation of the division; or

(6) the remaining assets of one or more resulting companies will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the resulting company was engaged or is about to engage.

(c) In determining whether the standards set forth in

1 paragraph (3) of subsection (b) have been satisfied, the
2 Director shall only apply the Uniform Voidable Transactions
3 Fraudulent Transfer Act to a dividing company in its capacity
4 as a resulting company and shall not apply the Uniform
5 Voidable Transactions Fraudulent Transfer Act to any dividing
6 company that is not proposed to survive the division.

7 (d) In determining whether the standards set forth in
8 paragraphs (3), (4), (5), and (6) of subsection (b) have been
9 satisfied, the Director may consider all proposed assets of
10 the resulting company, including, without limitation,
11 reinsurance agreements, parental guarantees, support or keep
12 well agreements, or capital maintenance or contingent capital
13 agreements, in each case, regardless of whether the same would
14 qualify as an admitted asset as defined in Section 3.1.

15 (e) In determining whether the standards set forth in
16 paragraph (3) of subsection (b) have been satisfied, with
17 respect to each resulting company, the Director shall, in
18 applying the Uniform Voidable Transactions Fraudulent Transfer
19 Act, treat:

- 20 (1) the resulting company as a debtor;
- 21 (2) liabilities allocated to the resulting company as
22 obligations incurred by a debtor;
- 23 (3) the resulting company as not having received
24 reasonably equivalent value in exchange for incurring the
25 obligations; and
- 26 (4) assets allocated to the resulting company as

1 remaining property.

2 (f) All information, documents, materials, and copies
3 thereof submitted to, obtained by, or disclosed to the
4 Director in connection with a plan of division or in
5 contemplation thereof, including any information, documents,
6 materials, or copies provided by or on behalf of a domestic
7 stock company in advance of its adoption or submission of a
8 plan of division, shall be confidential and shall be subject
9 to the same protection and treatment in accordance with
10 Section 131.22 as documents and reports disclosed to or filed
11 with the Director pursuant to subsection (a) of Section
12 131.14b until such time, if any, as a notice of the hearing
13 contemplated by subsection (a) is issued.

14 (g) From and after the issuance of a notice of the hearing
15 contemplated by subsection (a), all business, financial, and
16 actuarial information that the domestic stock company requests
17 confidential treatment, other than the plan of division, shall
18 continue to be confidential and shall not be available for
19 public inspection and shall be subject to the same protection
20 and treatment in accordance with Section 131.22 as documents
21 and reports disclosed to or filed with the Director pursuant
22 to subsection (a) of Section 131.14b.

23 (h) All expenses incurred by the Director in connection
24 with proceedings under this Section, including expenses for
25 the services of any attorneys, actuaries, accountants, and
26 other experts as may be reasonably necessary to assist the

1 Director in reviewing the proposed division, shall be paid by
2 the dividing company filing the plan of division. A dividing
3 company may allocate expenses described in this subsection in
4 a plan of division in the same manner as any other liability.

5 (i) If the Director approves a plan of division, the
6 Director shall issue an order that shall be accompanied by
7 findings of fact and conclusions of law.

8 (j) The conditions in this Section for freeing one or more
9 of the resulting companies from the liabilities of the
10 dividing company and for allocating some or all of the
11 liabilities of the dividing company shall be conclusively
12 deemed to have been satisfied if the plan of division has been
13 approved by the Director in a final order that is not subject
14 to further appeal.

15 (k) If a dividing company amends its plan of division at
16 any time before the plan of division becomes effective,
17 including after the Director's approval of the plan or after
18 any hearing has been conducted under this Section, then the
19 dividing company shall file the amended plan of division for
20 approval by the Director pursuant to the provisions of this
21 Section. If the Director has already issued an order approving
22 the dividing company's previous plan of division under
23 subsection (i), then that order shall not be rescinded by the
24 Director's subsequent disapproval of an amended plan.

25 (1) If a hearing is conducted on the amended plan of
26 division after the Director has approved a previous plan

1 of division, then the hearing shall not be considered a
2 rehearing or a reopening of any hearing conducted on the
3 previous plan. Nothing in this Section shall prohibit the
4 dividing company from requesting a rehearing or reopening
5 of any hearing conducted on any disapproved plan of
6 division, amended or otherwise.

7 (2) Whether under direct review or in a hearing, the
8 Director may rely on information already submitted or
9 developed in connection with the previous plan of
10 division, as well as any findings of fact or conclusions
11 of law if a hearing has been conducted or an approval order
12 has been issued on the previous plan, to the extent the
13 information, findings, or conclusions remain relevant to
14 the amended plan of division, and the Director shall
15 collect any other information necessary to make a
16 determination under subsection (b).

17 (3) The fee assessed under Section 408 for filing a
18 plan of division shall not apply to the filing of an
19 amended plan of division, but subsection (h) shall apply
20 to all proceedings related to the amended plan.

21 (Source: P.A. 102-394, eff. 8-16-21; 102-578, eff. 7-1-22 (See
22 Section 5 of P.A. 102-672 for effective date of P.A. 102-578);
23 103-90, eff. 6-9-23.)

24 (215 ILCS 5/204) (from Ch. 73, par. 816)

25 Sec. 204. Prohibited and voidable transfers and liens.

1 (a) (1) A preference is a transfer of any of the property of
2 a company to or for the benefit of a creditor, for or on
3 account of an antecedent debt, made or suffered by the company
4 within 2 years before the filing of a complaint under this
5 Article, the effect of which may be to enable the creditor to
6 obtain a greater percentage of this debt than another creditor
7 of the same class would receive.

8 (2) Any preference may be avoided by the Director as
9 rehabilitator, liquidator, or conservator if:

10 (A) the company was insolvent at the time of the
11 transfer; and

12 (B) the transfer was made within 4 months before the
13 filing of the complaint; or the creditor receiving it was
14 (i) an officer, or any employee or attorney or other
15 person who was in fact in a position of comparable
16 influence in the company to an officer whether or not that
17 person held such a position, (ii) any shareholder holding,
18 directly or indirectly, more than 5% of any class of any
19 equity security issued by the company, or (iii) any other
20 person, firm, corporation, association, or aggregation of
21 individuals with whom the company did not deal at arm's
22 length.

23 (3) Where the preference is voidable, the Director as
24 rehabilitator, liquidator, or conservator may recover the
25 property or, if it has been converted, its value from any
26 person who has received or converted the property; except

1 where a bona fide purchaser or lienor has given less than fair
2 equivalent value, the purchaser or lienor shall have a lien
3 upon the property to the extent of the consideration actually
4 given. Where a preference by way of lien or security title is
5 voidable, the court may on due notice order the lien or title
6 to be preserved for the benefit of the estate, in which event
7 the lien or title shall pass to the Director as rehabilitator
8 or liquidator.

9 (b) (1) A transfer of property other than real property
10 shall be deemed to be made or suffered when it becomes so far
11 perfected that no subsequent lien obtainable by legal or
12 equitable proceedings on a simple contract could become
13 superior to the rights of the transferee.

14 (2) A transfer of real property shall be deemed to be made
15 or suffered when it becomes so far perfected that no
16 subsequent bona fide purchaser from the company could obtain
17 rights superior to the rights of the transferee.

18 (3) A transfer that creates an equitable lien shall not be
19 deemed to be perfected if there are available means by which a
20 legal lien could be created.

21 (4) A transfer not perfected before the filing of a
22 complaint shall be deemed to be made immediately before the
23 filing of the complaint.

24 (5) The provisions of this subsection apply whether or not
25 there are or were creditors who might have obtained liens or
26 persons who might have become bona fide purchasers.

(c) For purposes of this Section:

(1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens that, under applicable law, are given a special priority over other liens that are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (b) of this Section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien could not, however, become superior and a purchase could not create superior rights for the purpose of subsection (b) of this Section through any acts subsequent to an obtaining of the lien or subsequent to a purchase that requires the agreement or concurrence of any third party or that requires any further judicial action or ruling.

(d) A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection (b) of this Section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if the loan is actually made, or a transfer that becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(e) If any lien deemed voidable under part (2) of subsection (a) of this Section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of a company before the filing of a complaint under this Article, the indemnifying transfer or lien shall also be deemed voidable.

(f) The property affected by any lien deemed voidable under subsections (a) and (e) of this Section shall be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the Director as rehabilitator or liquidator, except that the court may, on due notice, order

1 any such lien to be preserved for the benefit of the estate and
2 the court may direct that such conveyance be executed as may be
3 proper or adequate to evidence the title of the Director as
4 rehabilitator or liquidator.

5 (g) The court shall have summary jurisdiction over any
6 proceeding by the Director as rehabilitator, liquidator, or
7 conservator to hear and determine the rights of any parties
8 under this Section. Reasonable notice of any hearings in the
9 proceeding shall be given to all parties in interest,
10 including the obligee of a releasing bond or other life
11 obligation. Where an order is entered for the recovery of
12 indemnifying property in kind or for the avoidance of an
13 indemnifying lien, the court, upon application of any party in
14 interest, shall in the same proceeding ascertain the value of
15 the property or lien, and if the value is less than the amount
16 for which the property is indemnity or than the amount of the
17 lien, the transferee or lienholder may elect to retain the
18 property or lien upon payment of its value, as ascertained by
19 the court, to the Director as rehabilitator, liquidator, or
20 conservator, within such reasonable times as the court shall
21 fix.

22 (h) The liability of the surety under the releasing bond
23 or other similar obligation shall be discharged to the extent
24 of the value of the indemnifying property recovered or the
25 indemnifying lien nullified and avoided by the Director as
26 rehabilitator, liquidator, or conservator. Where the property

1 is retained under subsection (g) of this Section, the
2 liability shall be discharged to the extent of the amount paid
3 to the Director as rehabilitator, liquidator, or conservator.

4 (i) If a creditor has been preferred and thereafter in
5 good faith gives the company further credit without security
6 of any kind, for property which becomes a part of the company's
7 estate, the amount of the new credit remaining unpaid at the
8 time of the petition may be set off against the preference
9 which would otherwise be recoverable from the creditor.

10 (j) If a company shall, directly or indirectly, within 4
11 months before the filing of a complaint under this Article, or
12 at any time in contemplation of such a proceeding, pay money or
13 transfer property to any attorney for services rendered or to
14 be rendered, the transactions may be examined by the court on
15 its own motion or shall be examined by the court on petition of
16 the Director as rehabilitator, liquidator, or conservator and
17 shall be held valid only to the extent of a reasonable amount
18 to be determined by the court, and the excess may be recovered
19 by the Director as rehabilitator, liquidator, or conservator
20 for the benefit of the estate provided that where the attorney
21 is in a position of influence in the company or an affiliate
22 thereof payment of any money or the transfer of any property to
23 the attorney for services rendered or to be rendered shall be
24 governed by item (B) of part (2) of subsection (a) of this
25 Section.

26 (k) (1) An officer, director, manager, employee,

1 shareholder, member, subscriber, attorney, or other person
2 acting on behalf of the company who knowingly participates in
3 giving any preference when that officer, director, manager,
4 employee, shareholder, member, subscriber, attorney, or other
5 person has reasonable cause to believe the company is or is
6 about to become insolvent at the time of the preference shall
7 be personally liable to the Director as rehabilitator,
8 liquidator, or conservator for the amount of the preference.
9 There is a reasonable cause to so believe if the transfer was
10 made within 4 months before the date of filing of the
11 complaint.

12 (2) A person receiving any property from the company or
13 the benefit thereof as a preference voidable under subsection
14 (a) of this Section shall be personally liable therefor and
15 shall be bound to account to the Director as rehabilitator,
16 liquidator, or conservator.

17 (3) Nothing in this Section shall prejudice any other
18 claim by the Director as rehabilitator, liquidator, or
19 conservator against any person.

20 (1) For purposes of this Section, the company is presumed
21 to have been insolvent on and during the 4 month period
22 immediately preceding the date of the filing of the complaint.

23 (m) The Director as rehabilitator, liquidator, or
24 conservator may not avoid a transfer under this Section to the
25 extent that the transfer was:

26 (A) Intended by the company and the creditor to or for

1 whose benefit the transfer was made to be a
2 contemporaneous exchange for new value given to the
3 company, and was in fact a substantially contemporaneous
4 exchange; or

5 (B) In payment of a debt incurred by the company in the
6 ordinary course of business or financial affairs of the
7 company and the transferee; made in the ordinary course of
8 business or financial affairs of the company and the
9 transferee; and made according to ordinary business terms;

10 (C) In the case of a transfer by a company where the
11 Director has determined that an event described in Section
12 35A-25 or 35A-30 has occurred, specifically approved by
13 the Director in writing pursuant to this subsection,
14 whether or not the company is in receivership under this
15 Article. Upon approval by the Director, such a transfer
16 cannot later be found to constitute a prohibited or
17 voidable transfer based solely upon a deviation from the
18 statutory payment priorities established by law for any
19 subsequent receivership; or

20 (D) Of money or other property arising under or in
21 connection with any Federal Home Loan Bank security
22 agreement or any pledge, security, collateral or guarantee
23 agreement, or any other similar arrangement or credit
24 enhancement relating to a Federal Home Loan Bank security
25 agreement.

26 (n) The Director as rehabilitator, liquidator, or

1 conservator may avoid any transfer of or lien upon the
2 property of a company that the estate of the company or a
3 policyholder, creditor, member, or stockholder of the company
4 may have avoided, and the Director as rehabilitator,
5 liquidator, or conservator may recover and collect the
6 property so transferred or its value from the person to whom it
7 was transferred unless the property was transferred to a bona
8 fide holder for value before the filing of the complaint. The
9 Director as rehabilitator, liquidator, or conservator shall be
10 deemed a creditor for purposes of pursuing claims under the
11 Uniform Voidable Transactions ~~Fraudulent Transfer~~ Act.

12 (o) Notwithstanding any provision of this Article to the
13 contrary, a Federal Home Loan Bank shall not be stayed,
14 enjoined, or prohibited from exercising or enforcing any right
15 or cause of action regarding collateral pledged under any
16 security agreement or any pledge, security, collateral or
17 guarantee agreement, or any other similar arrangement or
18 credit enhancement relating to a Federal Home Loan Bank
19 security agreement.

20 (Source: P.A. 100-89, eff. 8-11-17.)

21 Section 10. The Uniform Fraudulent Transfer Act is amended
22 by changing the title of the Act and Sections 1, 2, 3, 4, 5, 6,
23 7, 8, 9, and 10 and by adding Sections 10.1, 10.2, and 14 as
24 follows:

1 (740 ILCS 160/Act title)

2 An Act in relation to voidable transactions ~~fraudulent~~
3 ~~transfers~~.

4 (740 ILCS 160/1) (from Ch. 59, par. 101)

5 Sec. 1. Short title. This Act, ~~which was formerly cited as~~
6 ~~the Uniform Fraudulent Transfer Act,~~ shall be known and may be
7 cited as the Uniform Voidable Transactions ~~Fraudulent Transfer~~
8 Act.

9 (Source: P.A. 86-814.)

10 (740 ILCS 160/2) (from Ch. 59, par. 102)

11 Sec. 2. Definitions. ~~As used in this Act:~~ As used in this
12 Act:

13 (a) "Affiliate" means:

14 (1) a person that ~~who~~ directly or indirectly owns,
15 controls, or holds with power to vote, 20% or more of the
16 outstanding voting securities of the debtor, other than a
17 person that ~~who~~ holds the securities: ~~;~~ ~~;~~

18 (A) as a fiduciary or agent without sole
19 discretionary power to vote the securities; or

20 (B) solely to secure a debt, if the person has not
21 in fact exercised the power to vote;

22 (2) a corporation with 20% or more outstanding voting
23 securities which are directly or indirectly owned,
24 controlled, or held with power to vote, by the debtor or a

1 person that ~~who~~ directly or indirectly owns, controls, or
2 holds with power to vote, 20% or more of the outstanding
3 voting securities of the debtor, other than a person that
4 ~~who~~ holds the securities: -

5 (A) as a fiduciary or agent without sole
6 discretionary power to vote the securities; or

7 (B) solely to secure a debt, if the person has not
8 in fact exercised the power to vote;

9 (3) a person whose business is operated by the
10 debtor under a lease or other agreement, or a person
11 substantially all of whose assets are controlled by
12 the debtor; or

13 (4) a person that ~~who~~ operates the debtor's business
14 under a lease or other agreement or controls substantially
15 all of the debtor's assets.

16 (b) "Asset" means property of a debtor, but the term does
17 not include:

18 (1) property to the extent it is encumbered by a valid
19 lien;

20 (2) property to the extent it is generally exempt
21 under nonbankruptcy law ~~laws of this State~~; or

22 (3) an interest in property held in tenancy by the
23 entireties to the extent it is not subject to process by a
24 creditor holding a claim against only one tenant.

25 (c) "Claim", except as used in "claim for relief", means a
26 right to payment, whether or not the right is reduced to

1 judgment, liquidated, unliquidated, fixed, contingent,
2 matured, unmatured, disputed, undisputed, legal, equitable,
3 secured, or unsecured.

4 (d) "Creditor" means a person that who has a claim,
5 including a claim for past-due child support.

6 (e) "Debt" means liability on a claim.

7 (f) "Debtor" means a person that who is liable on a claim.

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

11 (h) ~~(g)~~ "Insider" includes:

12 (1) if the debtor is an individual: ~~;~~ τ

13 (A) a relative of the debtor or of a general
14 partner of the debtor;

15 (B) a partnership in which the debtor is a general
16 partner;

17 (C) a general partner in a partnership described
18 in clause (B); or

19 (D) a corporation of which the debtor is a
20 director, officer, or person in control;

21 (2) if the debtor is a corporation: ~~;~~ τ

22 (A) a director of the debtor;

23 (B) an officer of the debtor;

24 (C) a person in control of the debtor;

25 (D) a partnership in which the debtor is a general
26 partner;

(E) a general partner in a partnership described in clause (D); or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(3) if the debtor is a partnership;

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in clause (C); or

(E) a person in control of the debtor;

(4) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(5) a managing agent of the debtor.

(i) (h) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(j) "Organization" means a person other than an individual. (i) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate,

1 ~~trust, or any other legal or commercial entity.~~

2 (k) "Person" means an individual, estate, partnership,
3 association, trust, business or nonprofit entity, public
4 corporation, government or governmental subdivision, agency,
5 or instrumentality, or other legal or commercial entity.

6 (l) (j) "Property" means anything that may be the subject
7 of ownership.

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

11 (n) (k) "Relative" means an individual related by
12 consanguinity within the third degree as determined by the
13 common law, a spouse, or an individual related to a spouse
14 within the third degree as so determined, and includes an
15 individual in an adoptive relationship within the third
16 degree.

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

19 (1) to execute or adopt a tangible symbol; or
20 (2) to attach to or logically associate with the
21 record an electronic symbol, sound, or process.

22 (p) (l) "Transfer" means every mode, direct or indirect,
23 absolute or conditional, voluntary or involuntary, of
24 disposing of or parting with an asset or an interest in an
25 asset, and includes payment of money, release, lease, license,
26 and creation of a lien or other encumbrance.

1 (q) (m) "Valid lien" means a lien that is effective
2 against the holder of a judicial lien subsequently obtained by
3 legal or equitable process or proceedings.

4 (Source: P.A. 90-18, eff. 7-1-97.)

5 (740 ILCS 160/3) (from Ch. 59, par. 103)

6 Sec. 3. Insolvency.

7 (a) A debtor is insolvent if, at a fair valuation, the sum
8 of the debtor's debts is greater than the sum all of the
9 debtor's assets at a fair valuation.

10 (b) A debtor that who is generally not paying the debtor's
11 his debts as they become due other than as a result of a bona
12 fide dispute is presumed to be insolvent. The presumption
13 imposes on the party against which the presumption is directed
14 the burden of proving that the nonexistence of insolvency is
15 more probable than its existence.

16 (c) A partnership is insolvent under subsection (a) if the
17 sum of the partnership's debts is greater than the aggregate,
18 at a fair valuation, of all of the partnership's assets and the
19 sum of the excess of the value of each general partner's
20 nonpartnership assets over the partner's nonpartnership debts.

21 (d) Assets under this Section do not include property
22 that has been transferred, concealed, or removed with intent
23 to hinder, delay, or defraud creditors or that has been
24 transferred in a manner making the transfer voidable under
25 this Act.

1 (d) (e) Debts under this Section do not include an
2 obligation to the extent it is secured by a valid lien on
3 property of the debtor not included as an asset.

4 (Source: P.A. 86-814.)

5 (740 ILCS 160/4) (from Ch. 59, par. 104)

6 Sec. 4. Value.

7 (a) Value is given for a transfer or an obligation if, in
8 exchange for the transfer or obligation, property is
9 transferred or an antecedent debt is secured or satisfied, but
10 value does not include an unperformed promise made otherwise
11 than in the ordinary course of the promisor's business to
12 furnish support to the debtor or another person.

13 (b) For the purposes of paragraph (2) of subsection (a) of
14 Section 5 and Section 6, a person gives a reasonably
15 equivalent value if the person acquires an interest of the
16 debtor in an asset pursuant to a regularly conducted,
17 noncollusive foreclosure sale or execution of a power of sale
18 for the acquisition or disposition of the interest of the
19 debtor upon default under a mortgage, deed of trust, or
20 security agreement.

21 (c) A transfer is made for present value if the exchange
22 between the debtor and the transferee is intended by them to be
23 contemporaneous and is in fact substantially contemporaneous.

24 (Source: P.A. 86-814.)

(740 ILCS 160/5) (from Ch. 59, par. 105)

Sec. 5. Transfer or obligation voidable as to present or future creditor.

(a) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

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

(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur, or believed or reasonably should have believed that the debtor ~~he~~ would incur, debts beyond the debtor's ~~his~~ ability to pay as they became due.

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

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor that ~~who~~ transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection

(a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(Source: P.A. 86-814.)

1 Sec. 6. Transfer or obligation voidable as to present
2 creditor.

3 (a) A transfer made or obligation incurred by a debtor is
4 voidable ~~fraudulent~~ as to a creditor whose claim arose before
5 the transfer was made or the obligation was incurred if the
6 debtor made the transfer or incurred the obligation without
7 receiving a reasonably equivalent value in exchange for the
8 transfer or obligation and the debtor was insolvent at that
9 time or the debtor became insolvent as a result of the transfer
10 or obligation.

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

16 (c) Subject to subsection (b) of Section 3, a creditor
17 making a claim for relief under subsection (a) or (b) has the
18 burden of proving the elements of the claim for relief by a
19 preponderance of the evidence.

20 (Source: P.A. 86-814.)

21 (740 ILCS 160/7) (from Ch. 59, par. 107)

22 Sec. 7. When transfer is made or obligation is incurred.
23 ~~For the purposes of this Act:~~ For the purposes of this Act:

24 (a) a transfer is made:

25 (1) with respect to an asset that is real property

1 other than a fixture, but including the interest of a
2 seller or purchaser under a contract for the sale of the
3 asset, when the transfer is so far perfected that a
4 good-faith purchaser of the asset from the debtor against
5 which whom applicable law permits the transfer to be
6 perfected cannot acquire an interest in the asset that is
7 superior to the interest of the transferee; and

8 (2) with respect to an asset that is not real property
9 or that is a fixture, when the transfer is so far perfected
10 that a creditor on a simple contract cannot acquire a
11 judicial lien otherwise than under this Act that is
12 superior to the interest of the transferee;

13 (b) if applicable law permits the transfer to be
14 perfected as provided in subsection (a) and the transfer
15 is not so perfected before the commencement of an action
16 for relief under this Act, the transfer is deemed made
17 immediately before the commencement of the action;

18 (c) if applicable law does not permit the transfer to be
19 perfected as provided in subsection (a), the transfer is made
20 when it becomes effective between the debtor and the
21 transferee;

22 (d) a transfer is not made until the debtor has acquired
23 rights in the asset transferred; and

24 (e) an obligation is incurred:

25 (1) if oral, when it becomes effective between the
26 parties; or

(2) if evidenced by a record writing, when the record signed writing executed by the obligor is delivered to or for the benefit of the obligee.

(Source: P.A. 86-814.)

(740 ILCS 160/8) (from Ch. 59, par. 108)

Sec. 8. Remedies of creditor.

(a) In an action for relief against a transfer or obligation under this Act, a creditor, subject to the limitations in Section 9, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law in accordance with the procedure prescribed by the Code of Civil Procedure; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure: 7

(A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(C) any other relief the circumstances may require.

1 (b) If a creditor has obtained a judgment on a claim
2 against the debtor, the creditor, if the court so orders, may
3 levy execution on the asset transferred or its proceeds.

4 (Source: P.A. 86-814.)

5 (740 ILCS 160/9) (from Ch. 59, par. 109)

6 Sec. 9. Defenses, liability, and protection of transferee
7 or obligee.

8 (a) A transfer or obligation is not voidable under
9 paragraph (1) of subsection (a) of Section 5 against a person
10 that who took in good faith and for a reasonably equivalent
11 value given the debtor or against any subsequent transferee or
12 obligee.

13 (b) To the extent a transfer is avoidable in an action by a
14 creditor under paragraph (1) of subsection (a) of Section 8,
15 the following rules apply:

16 (1) Except as otherwise provided in this Section, ~~to~~
17 ~~the extent a transfer is voidable in an action by a~~
18 ~~creditor under paragraph (1) of subsection (a) of Section~~
19 ~~8,~~ the creditor may recover judgment ~~judgement~~ for the
20 value of the asset transferred, as adjusted under
21 subsection (c), or the amount necessary to satisfy the
22 creditor's claim, whichever is less. The judgment may be
23 entered against:

24 (A) ~~+1~~ the first transferee of the asset or the
25 person for whose benefit the transfer was made; or

(B) an immediate or mediate transferee of the first transferee, other than: (2) any subsequent transferee other than

(i) a good-faith transferee that who took for value; or from any subsequent transferee.

(ii) an immediate or mediate good-faith transferee of a person described in item (i).

(2) Recovery pursuant to paragraph (1) of subsection

(a) or subsection (b) of Section 8 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subparagraph (A) or (B) of paragraph (1).

(c) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

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

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

(2) enforcement of an any obligation incurred; or

(3) a reduction in the amount of the liability on the
agreement.

(e) A transfer is not voidable under paragraph (2) of

1 subsection (a) of Section 5 or Section 6 if the transfer
2 results from:

3 (1) termination of a lease upon default by the debtor
4 when the termination is pursuant to the lease and
5 applicable law; or

6 (2) enforcement of a security interest in compliance
7 with Article 9 of the Uniform Commercial Code, other than
8 acceptance of collateral in full or partial satisfaction
9 of the obligation it secures.

10 (f) A transfer is not voidable under subsection (b) of
11 Section 6:

12 (1) to the extent the insider gave new value to or for
13 the benefit of the debtor after the transfer was made, except to the extent unless the new value was secured by a
14 valid lien;

16 (2) if made in the ordinary course of business or
17 financial affairs of the debtor and the insider; or

18 (3) if made pursuant to a good-faith effort to
19 rehabilitate the debtor and the transfer secured present
20 value given for that purpose as well as an antecedent debt
21 of the debtor.

22 (g) The following rules determine the burden of proving
23 matters referred to in this Section:

24 (1) A party that seeks to invoke subsection (a), (d),
25 (e), or (f) has the burden of proving the applicability of
26 that subsection.

1 (2) Except as otherwise provided in paragraphs (3) and
2 (4), the creditor has the burden of proving each
3 applicable element of subsection (b) or (c).

4 (3) The transferee has the burden of proving the
5 applicability to the transferee of item (i) or (ii) of
6 subparagraph (B) of paragraph (1) of subsection (b).

7 (4) A party that seeks adjustment under subsection (c)
8 has the burden of proving the adjustment.

9 (h) The standard of proof required to establish matters
10 referred to in this Section is preponderance of the evidence.

11 (Source: P.A. 86-814.)

12 (740 ILCS 160/10) (from Ch. 59, par. 110)

13 Sec. 10. Extinguishment of claim for relief. A claim for
14 relief ~~cause of action~~ with respect to a ~~fraudulent~~ transfer
15 or obligation under this Act is extinguished unless action is
16 brought:

17 (a) under paragraph (1) of subsection (a) of Section
18 5, not later than within 4 years after the transfer was
19 made or the obligation was incurred or, if later, not
20 later than within one year after the transfer or
21 obligation was or could reasonably have been discovered by
22 the claimant;

23 (b) under paragraph (2) of subsection (a) of Section 5
24 or subsection (a) of Section 6, not later than within 4
25 years after the transfer was made or the obligation was

1 incurred; or

2 (c) under subsection (b) of Section 6, not later than
3 within one year after the transfer was made ~~or the~~
4 obligation was incurred.

5 (Source: P.A. 86-814.)

6 (740 ILCS 160/10.1 new)

7 Sec. 10.1. Governing law.

8 (a) In this Section, the following rules determine a
9 debtor's location:

10 (1) A debtor who is an individual is located at the
11 individual's principal residence.

12 (2) A debtor that is an organization and has only one
13 place of business is located at its place of business.

14 (3) A debtor that is an organization and has more than
15 one place of business is located at its chief executive
16 office.

17 (b) A claim for relief in the nature of a claim for relief
18 under this Act is governed by the local law of the jurisdiction
19 in which the debtor is located when the transfer is made or the
20 obligation is incurred.

21 (740 ILCS 160/10.2 new)

22 Sec. 10.2. Application to series organization.

23 (a) In this Section:

24 (1) "Protected series" means an arrangement, however

1 denominated, created by a series organization that,
2 pursuant to the law under which the series organization is
3 organized, has the characteristics set forth in paragraph
4 (2).

5 (2) "Series organization" means an organization that,
6 pursuant to the law under which it is organized, has the
7 following characteristics:

8 (A) The organic record of the organization
9 provides for creation by the organization of one or
10 more protected series, however denominated, with
11 respect to specified property of the organization, and
12 for records to be maintained for each protected series
13 that identify the property of or associated with the
14 protected series.

15 (B) Debt incurred or existing with respect to the
16 activities of, or property of or associated with, a
17 particular protected series is enforceable against the
18 property of or associated with the protected series
19 only, and not against the property of or associated
20 with the organization or other protected series of the
21 organization.

22 (C) Debt incurred or existing with respect to the
23 activities or property of the organization is
24 enforceable against the property of the organization
25 only, and not against the property of or associated
26 with a protected series of the organization.

1 (b) A series organization and each protected series of the
2 organization is a separate person for purposes of this Act,
3 even if for other purposes a protected series is not a person
4 separate from the organization or other protected series of
5 the organization.

6 (740 ILCS 160/14 new)

7 Sec. 14. Relation to the Electronic Signatures in Global
8 and National Commerce Act. This Act modifies, limits, or
9 supersedes the Electronic Signatures in Global and National
10 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
11 modify, limit, or supersede Section 101(c) of that Act, 15
12 U.S.C. Section 7001(c), or authorize electronic delivery of
13 any of the notices described in Section 103(b) of that Act, 15
14 U.S.C. Section 7003(b).

15 Section 15. The Illinois Trust Code is amended by changing
16 Sections 1332 and 1335 as follows:

17 (760 ILCS 3/1332)

18 Sec. 1332. Creditor claim: general power created by
19 powerholder.

20 (a) In this Section, "power of appointment created by the
21 powerholder" includes a power of appointment created in a
22 transfer by another person to the extent the powerholder
23 contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in the Uniform Voidable Transactions Fraudulent Transfer Act.

(c) Subject to subsection (b), appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(d) Subject to subsections (b) and (c), and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

(Source: P.A. 101-48, eff. 1-1-20.)

1 (760 ILCS 3/1335)

2 Sec. 1335. Creditor claim: nongeneral power.

3 (a) Except as otherwise provided in subsections (b) and
4 (c), appointive property subject to a nongeneral power of
5 appointment is exempt from a claim of a creditor of the
6 powerholder or the powerholder's estate.

7 (b) Appointive property subject to a nongeneral power of
8 appointment is subject to a claim of a creditor of the
9 powerholder or the powerholder's estate to the extent that the
10 powerholder owned the property and, reserving the nongeneral
11 power, transferred the property in violation of the Uniform
12 Voidable Transactions ~~Fraudulent Transfer~~ Act.

13 (c) If the initial gift in default of appointment is to the
14 powerholder or the powerholder's estate, a nongeneral power of
15 appointment is treated for purposes of this Section as a
16 general power.

17 (Source: P.A. 101-48, eff. 1-1-20.)

1 INDEX

2 Statutes amended in order of appearance

3 215 ILCS 5/35B-25

4 215 ILCS 5/204 from Ch. 73, par. 816

5 740 ILCS 160/Act title

6 740 ILCS 160/1 from Ch. 59, par. 101

7 740 ILCS 160/2 from Ch. 59, par. 102

8 740 ILCS 160/3 from Ch. 59, par. 103

9 740 ILCS 160/4 from Ch. 59, par. 104

10 740 ILCS 160/5 from Ch. 59, par. 105

11 740 ILCS 160/6 from Ch. 59, par. 106

12 740 ILCS 160/7 from Ch. 59, par. 107

13 740 ILCS 160/8 from Ch. 59, par. 108

14 740 ILCS 160/9 from Ch. 59, par. 109

15 740 ILCS 160/10 from Ch. 59, par. 110

16 740 ILCS 160/10.1 new

17 740 ILCS 160/10.2 new

18 740 ILCS 160/14 new

19 760 ILCS 3/1332

20 760 ILCS 3/1335