

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. Haadsma, Cambensy, Tyrone Carter, Hope, Coleman, Breen, Witwer and
Wozniak

ENROLLED HOUSE BILL No. 4618

AN ACT to amend 1998 PA 434, entitled “An act to provide for the setting aside and modification of certain transfers, conveyances, and obligations; to make uniform the law of fraudulent transfers; and to provide remedies,” by amending sections 1, 4, 5, and 10 (MCL 566.31, 566.34, 566.35, and 566.40), as amended by 2016 PA 552.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

(a) “Affiliate” means a person that is 1 or more of the following:

(i) A person that directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities in either of the following circumstances:

(A) As a fiduciary or agent without sole discretionary power to vote the securities.

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote.

(ii) A corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities in either of the following circumstances:

(A) As a fiduciary or agent without sole discretionary power to vote the securities.

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote.

(iii) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor.

(iv) A person that operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(b) “Asset” means property of a debtor. Asset does not include any of the following:

(i) Property to the extent it is encumbered by a valid lien.

(ii) Property to the extent it is generally exempt under nonbankruptcy law.

(iii) An interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor that holds a claim against only 1 tenant.

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

(d) “Creditor” means a person that has a claim.

(e) “Debt” means liability on a claim.

(f) “Debtor” means a person that is liable on a claim.

(g) “Disposition” means that term as defined in section 2 of the qualified dispositions in trust act, 2016 PA 330, MCL 700.1042.

(h) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(i) “Insider” includes all of the following:

(i) If the debtor is an individual, all of the following:

(A) A relative of the debtor or of a general partner of the debtor.

(B) A partnership in which the debtor is a general partner.

(C) A general partner in a partnership described in sub-subparagraph (B).

(D) A corporation of which the debtor is a director, officer, or person in control.

(ii) If the debtor is a corporation, all of the following:

(A) A director of the debtor.

(B) An officer of the debtor.

(C) A person in control of the debtor.

(D) A partnership in which the debtor is a general partner.

(E) A general partner in a partnership described in sub-subparagraph (D).

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

(iii) If the debtor is a partnership, all of the following:

(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 sub-subparagraph (C).

(E) A person in control of the debtor.

(iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

(v) A managing agent of the debtor.

(j) “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.

(k) “Organization” means a person other than an individual.

(l) “Person” means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(m) “Property” means anything that may be the subject of ownership.

(n) “Qualified disposition” means that term as defined in section 2 of the qualified dispositions in trust act, 2016 PA 330, MCL 700.1042.

(o) “Qualified trustee” means that term as defined in section 2 of the qualified dispositions in trust act, 2016 PA 330, MCL 700.1042.

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

(q) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(r) “Sign” means to do any of the following with present intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

(ii) Attach to or logically associate with the record an electronic symbol, sound, or process.

(s) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset. Transfer includes payment of money, release, lease, license, and creation of a lien or other encumbrance. Transfer does not include any of the following:

(i) The lapse, release, waiver, or disclaimer of a power of appointment given to a donee by a third party. As used in this subparagraph, "donee" means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(ii) The disposing of or parting with an asset or interest in an asset held in trust to the person who created the trust if all of the following apply:

(A) The trust is an irrevocable trust for the benefit of third parties.

(B) The trust is a grantor trust with regard to the person for income tax purposes under sections 671 to 679 of the internal revenue code of 1986, 26 USC 671 to 679.

(C) The trustee has the discretionary authority to reimburse or advance trust property to the person for taxes that concern income attributable to the trust property.

(D) The disposing of or parting with the asset or interest in the asset is the exercise by the trustee of the discretionary authority described in sub-subparagraph (C).

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

Sec. 4. (1) Except as otherwise provided in subsection (4), a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following circumstances:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor did either of the following:

(i) 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.

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

(2) In determining actual intent under subsection (1)(a) or (4), consideration may be given, among other factors, to whether 1 or more of the following occurred:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all of the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) 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.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

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

(3) Except as otherwise provided in subsection (4), a creditor that makes a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(4) A qualified disposition is fraudulent as to the creditor whose claim arose after the qualified disposition only if the qualified disposition was made with actual intent to hinder, delay, or defraud any creditor of the debtor. With respect to a qualified disposition, a creditor has the burden of proving the elements of the claim for relief by clear and convincing evidence.

Sec. 5. (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

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

(3) Except as provided in subsection (4) and subject to section 2(2), a creditor that makes a claim for relief under subsection (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(4) With respect to a qualified disposition, a creditor has the burden of proving the elements of the claim for relief by clear and convincing evidence.

Sec. 10. (1) In this section, except as provided in subsection (2), the following rules determine a debtor's location:

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

(b) A debtor that is an organization and has only 1 place of business is located at its place of business.

(c) A debtor that is an organization and has more than 1 place of business is located at its chief executive office.

(2) In this section, the following rules determine a qualified trustee's location:


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

(b) A qualified trustee whose activities are subject to supervision by the department of insurance and financial services, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision is located at the business location of the primary trust officer.

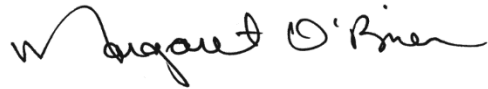
(3) Except as provided in subsection (4), a claim for relief in the nature of a claim for relief under this act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(4) With respect to a qualified disposition, a claim for relief under this act or a claim that a disposition is not a qualified disposition is governed by the local law of the jurisdiction in which the qualified trustee serving at the time the disposition was made was located.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor