

SENATE BILL No. 385

March 17, 2009, Introduced by Senator CLARKE and referred to the Committee on Judiciary.

A bill to amend 1998 PA 434, entitled
"Uniform fraudulent transfer act,"
by amending section 1 (MCL 566.31).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Affiliate" means 1 or more of the following:

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

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

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

11 (ii) A corporation 20% or more of whose outstanding voting

1 securities are directly or indirectly owned, controlled, or held
2 with power to vote by the debtor or a person who directly or
3 indirectly owns, controls, or holds, with power to vote, 20% or
4 more of the outstanding voting securities of the debtor, other than
5 a person who holds the securities in either of the following
6 circumstances:

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

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

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

14 (iv) A person who operates the debtor's business under a lease
15 or other agreement or controls substantially all of the debtor's
16 assets.

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

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

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

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

25 (c) "Claim" means a right to payment, whether or not the right
26 is reduced to judgment, liquidated, unliquidated, fixed,
27 contingent, matured, unmatured, disputed, undisputed, legal,

1 equitable, secured, or unsecured.

2 (d) "Creditor" means a person who has a claim.

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

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

5 (g) "Insider" includes all of the following:

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

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

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

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

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

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

15 (A) A director of the debtor.

16 (B) An officer of the debtor.

17 (C) A person in control of the debtor.

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

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

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

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

24 (A) A general partner in the debtor.

25 (B) A relative of a general partner in, a general partner of,
26 or a person in control of the debtor.

27 (C) Another partnership in which the debtor is a general

1 partner.

2 (D) A general partner in a partnership described in sub-
3 subparagraph (C).

4 (E) A person in control of the debtor.

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

7 (v) A managing agent of the debtor.

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

13 (i) "Person" means an individual, partnership, corporation,
14 association, organization, government or governmental subdivision
15 or agency, business trust, estate, trust, or any other legal or
16 commercial entity.

17 (j) "Property" means anything that may be the subject of
18 ownership.

19 (k) "Relative" means an individual related by consanguinity
20 within the third degree as determined by the common law, a spouse,
21 or an individual related to a spouse within the third degree as so
22 determined, and includes an individual in an adoptive relationship
23 within the third degree.

24 (l) "Transfer" means every mode, direct or indirect, absolute
25 or conditional, voluntary or involuntary, of disposing of or
26 parting with an asset or an interest in an asset. ~~and~~ **TRANSFER**
27 includes payment of money, release, lease, and creation of a lien

1 or other encumbrance. TRANSFER DOES NOT INCLUDE ANY OF THE
2 FOLLOWING:

3 (i) THE LAPSE, RELEASE, WAIVER, OR DISCLAIMER OF A POWER OF
4 APPOINTMENT GIVEN TO A DONEE BY A THIRD PARTY. AS USED IN THIS
5 SUBPARAGRAPH, "DONEE" MEANS THAT TERM AS DEFINED IN SECTION 2 OF
6 THE POWERS OF APPOINTMENT ACT OF 1967, 1967 PA 224, MCL 556.112.

7 (ii) THE CREATION OF A TRUST BY AN INDIVIDUAL IF ALL OF THE
8 FOLLOWING APPLY:

9 (A) THE INDIVIDUAL CREATED THE TRUST FOR THE BENEFIT OF THE
10 INDIVIDUAL'S SPOUSE.

11 (B) THE TRUST IS TREATED AS QUALIFIED TERMINABLE INTEREST
12 PROPERTY UNDER SECTION 2523 (F) OF THE INTERNAL REVENUE CODE, 26 USC
13 2523.

14 (C) THE INDIVIDUAL RETAINS A BENEFICIAL INTEREST IN THE TRUST
15 INCOME, TRUST PRINCIPAL, OR BOTH, WHICH BENEFICIAL INTEREST FOLLOWS
16 THE TERMINATION OF THE INDIVIDUAL'S SPOUSE'S PRIOR BENEFICIAL
17 INTEREST IN THE TRUST.

18 (iii) THE DISPOSING OF OR PARTING WITH AN ASSET OR INTEREST IN
19 AN ASSET HELD IN TRUST TO THE PERSON WHO CREATED THE TRUST IF ALL
20 OF THE FOLLOWING APPLY:

21 (A) THE TRUST IS AN IRREVOCABLE TRUST FOR THE BENEFIT OF THIRD
22 PARTIES.

23 (B) THE TRUST IS A GRANTOR TRUST WITH REGARD TO THE PERSON FOR
24 INCOME TAX PURPOSES PURSUANT TO SECTIONS 671 TO 679 OF THE INTERNAL
25 REVENUE CODE, 26 USC 671 TO 679.

26 (C) THE TRUSTEE HAS THE DISCRETIONARY AUTHORITY TO REIMBURSE
27 OR ADVANCE TRUST PROPERTY TO THE PERSON FOR TAXES CONCERNING INCOME

1 ATTRIBUTABLE TO THE TRUST PROPERTY.

2 (D) THE DISPOSING OF OR PARTING WITH THE ASSET OR INTEREST IN
3 THE ASSET IS THE EXERCISE BY THE TRUSTEE OF THE DISCRETIONARY
4 AUTHORITY DESCRIBED IN SUB-SUBPARAGRAPH (C) .

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

8 Enacting section 1. This amendatory act does not take effect
9 unless Senate Bill No. 387

10 of the 95th Legislature is enacted into law.