

SENATE BILL NO. 1236

December 03, 2020, Introduced by Senator LUCIDO and referred to the Committee on Insurance and Banking.

A bill to amend 1998 PA 434, entitled "Uniform voidable transactions act," 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:

1 Sec. 1. As used in this act:

2 (a) "Affiliate" means a person that is 1 or more of the
3 following:

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

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

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

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

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

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

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

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

26 (b) "Asset" means property of a debtor. Asset does not include
27 any of the following:

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

29 (ii) Property to the extent it is generally exempt under

1 nonbankruptcy law.

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

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

9 (d) "Creditor" means a person that has a claim.

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

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

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

14 (h) ~~(g)~~ "Electronic" means relating to technology having
15 electrical, digital, magnetic, wireless, optical, electromagnetic,
16 or similar capabilities.

17 (i) ~~(h)~~ "Insider" includes all of the following:

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

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

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

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

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

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

27 (A) A director of the debtor.

28 (B) An officer of the debtor.

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

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

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

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

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

7 (A) A general partner in the debtor.

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

10 (C) Another partnership in which the debtor is a general
11 partner.

12 (D) A general partner in a partnership described in sub-
13 subparagraph (C).

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

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

17 (v) A managing agent of the debtor.

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

23 (k) ~~(j)~~ "Organization" means a person other than an
24 individual.

25 (l) ~~(k)~~ "Person" means an individual, estate, partnership,
26 association, trust, business or nonprofit entity, public
27 corporation, government or governmental subdivision, agency, or
28 instrumentality, or any other legal or commercial entity.

29 (m) ~~(l)~~ "Property" means anything that may be the subject of

1 ownership.

2 **(n)** ~~(m)~~—"Qualified disposition" means that term as defined in
3 section 2 of the qualified dispositions in trust act, **2016 PA 330,**
4 **MCL 700.1042.**

5 **(o)** "Qualified trustee" means that term as defined in section
6 **2 of the qualified dispositions in trust act, 2016 PA 330, MCL**
7 **700.1042.**

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

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

16 **(r)** ~~(p)~~—"Sign" means to do any of the following with present
17 intent to authenticate or adopt a record:

18 (i) Execute or adopt a tangible symbol.

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

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

27 (i) The lapse, release, waiver, or disclaimer of a power of
28 appointment given to a donee by a third party. As used in this
29 subparagraph, "donee" means that term as defined in section 2 of

1 the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

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

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

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

10 (C) The trustee has the discretionary authority to reimburse
11 or advance trust property to the person for taxes ~~concerning~~**that**
12 **concern** income attributable to the trust property.

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

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

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

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

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

1 (i) Was engaged or was about to engage in a business or a
2 transaction for which the remaining assets of the debtor were
3 unreasonably small in relation to the business or transaction.

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

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

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

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

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

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

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

18 (f) The debtor absconded.

19 (g) The debtor removed or concealed assets.

20 (h) The value of the consideration received by the debtor was
21 reasonably equivalent to the value of the asset transferred or the
22 amount of the obligation incurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) ~~(2)~~ **Except as provided in subsection (4)**, a claim for
19 relief in the nature of a claim for relief under this act is
20 governed by the local law of the jurisdiction in which the debtor
21 is located when the transfer is made or the obligation is incurred.

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