

SENATE BILL REPORT

SB 5085

As of January 30, 2017

Title: An act relating to enactment of the uniform voidable transactions act.

Brief Description: Enacting the uniform voidable transactions act.

Sponsors: Senators Pedersen, Padden, Frockt and O'Ban; by request of Uniform Law Commission.

Brief History:

Committee Activity: Law & Justice: 1/19/17.

Brief Summary of Bill

- Changes the title of the state Uniform Fraudulent Transfer Act (UFTA) to the Uniform Voidable Transactions Act (UVTA).
- Authorizes a creditor making a claim for relief under the act and has the burden of proof by a preponderance of the evidence.
- Defines a debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.
- Grants that the UVTA is not applied retroactively to transfers made or obligations incurred prior to the effect date.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: UFTA provides a creditor with the means to reach assets a debtor has transferred to another person to keep them from being used to satisfy a debt. The UFTA was adopted by the Uniform Law Commission in 1984. Forty-five states subsequently enacted state versions of the UFTA, including Washington State in 1987. In 2014, the name UFTA was changed as a result of a series of amendments, and those amendments address a number of narrowly-defined issues. The act is now known as the UVTA.

The intent of the UVTA is the same as the UFTA—it classifies a category of transfers as fraudulent to creditors and provides creditors with a remedy for such transfers. The

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fundamental remedy is the recovery of the property for the creditor. The UVTA creates a right of action for any creditor against any debtor and any other person who has received property from the debtor in a fraudulent transfer. A fraudulent transfer occurs when a debtor intends to hinder, delay, or defraud a creditor, or transfers property under certain conditions to another person without receiving reasonably equivalent value in return.

Summary of Bill: The title of the state UFTA is changed to the UVTA. A creditor making a claim for relief under the UVTA has the burden of proof by a preponderance of the evidence. A special definition of insolvency for partnerships is removed. A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets. A claim for relief is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made, or obligation is incurred. A series organization is a separate person for the purposes of the UVTA, even if it is not a separate person for other purposes. The UVTA is not applied retroactively to transfers made or obligations incurred prior to the effect date.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The National Conference of Commissioners on Uniform State Laws was formed in 1892 by a group of states concerned by the intrusion of Congress into areas of law that had traditionally been regulated by the states. Congress felt it needed to act because the variations in state laws were providing barriers to interstate commerce. The American Bar Association was concerned about the change in the balance of power between states and the federal government. A federalist approach was made to get states to voluntarily align their laws and make them uniform so that Congress would not intrude. Washington joined the Uniform Law Commission (ULC) in 1905. Washington has more than 80 statutes that are uniform laws in effect. Washington has hosted the ULC four times; most recently in 2014 when these amendments to the UFTA were adopted. The commissioners' duties include bringing back proposals from the ULC for adoption by WA state.

The purpose of the fraudulent transfer law is to provide a remedy to creditors in situations where the debtor transfers property with intent to hinder, delay, or defraud creditors. It also provides defenses to transferees who took the property from the debtor in exchange for reasonably equivalent value in good faith. Washington currently has the UFTA and in 2014 the National Conference of Commissioners on Uniform State Laws approved an amended version, the UVTA.

The most important change to the law is the change of name of the act. The phrase fraudulent transfer created confusion. Defendants may not have committed any fraud. Judges may confuse the language of fraudulent transfer with the law of fraud. The burden of

proof under UVTA is a preponderance of evidence. It codifies that law and reduces confusion. The stigma of fraud is removed with the new language.

We recommended two non-uniform revisions to the UVTA. The UVTA's defense provisions is excessively narrow in two respects. An elderly couple put their house on the market and sold it. The buyer was exposed as a ponzi scheme fraudster. He was convicted and is serving 18 years in federal prison. His companies and personal assets were put into bankruptcy. The bankruptcy trustee found that one of the buyer's LLC's had made the wire transfer for the down payment on the house sold by the elderly couple. The couple was sued by the bankruptcy trustee and the couple lost. Although they exchanged reasonably equivalent value (the house) in exchange for payment, in order to prevail under the UVTA they were required to give the house to the debtor (the third party LLC). The non-uniform amendment would be more fair and just if they took payment in good faith and exchanged a reasonably equivalent value in the property, it won't matter whether the transfer was to the debtor or a third party.

There is one other non-uniform amendment. Reasonably equivalent value is defined as market value. The old UFTA said that value should be determined from the perspective of the creditor. If the value of the transferee gives to the transferor doesn't preserve the net worth of the transferor, then that doesn't count as a defense. That creates a problem for innocent good faith transferees who may provide services, an education, and consumables. All those things don't preserve the net worth of the transferor. We recommend value include not just value that would be good for creditors but any value that the market recognizes as reasonably equivalent for the property transferred.

Persons Testifying: PRO: Senator Pedersen, Prime Sponsor; Bruce Borrus, WSBA Creditor Debtor Rights section.

Persons Signed In To Testify But Not Testifying: No one.