

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB70

Hearing Date: Monday January 28, 2019
Committee On: Banking, Commerce and Insurance
Introducer: Hansen, M.
One Liner: Adopt the Uniform Voidable Transactions Act and eliminate the Uniform Fraudulent Transfer Act

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	7	Senators Gragert, Howard, Kolterman, La Grone, Lindstrom, Quick, Williams
Nay:		
Absent:	1	Senator McCollister
Present Not Voting:		

Oral Testimony:

Proponents:

Senator Matt Hansen
Larry Ruth
Edwin Smith
Donald Swanson
Jerry Stilmock

Representing:

Introducer
NE Uniform Law Commission
Uniform Law Commission
Self
Nebraska Bankers Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

This bill would enact 15 new sections to be known as the Uniform Voidable Transactions Act and would outright repeal and replace Nebraska's Uniform Fraudulent Transfer Act, sections 36-701 to 36-712. The bill would thereby adopt the set of amendments approved in 2014 by the National Conference of Commissioners on Uniform State Laws in the official text of its Uniform Fraudulent Transfer Act of 1984. Nebraska enacted its version of the Uniform Fraudulent Transfer Act in 1989. The Uniform Fraudulent Transfer Act 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. Substantial portions of the text of the Uniform Fraudulent Transfer Act carry over to the Uniform Voidable Transactions Act as it is renamed.

The uniform law commissioners' set of 2014 amendments was intended to address a small number of narrowly defined issues, and is not a comprehensive revision:

Deletion of the Special Definition of "Insolvency" for Partnerships. Section 2(c) of the act as originally written set forth a special definition of "insolvency" applicable to partnerships. The 2014 amendments delete original section 2(c), with the result that the general definition of "insolvency" in section 2(a) now applies to partnerships.

Evidentiary Matters. New sections 4(c), 5(c), 8(g), and 8(h) add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims for relief and defenses under the act.

Defenses. The 2014 amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or an obligee, as follows:

(1) As originally written, section 8(a) created a complete defense to an action under section 4(a)(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The 2014 amendments add to section 8(a) the further requirement that the reasonably equivalent value must be given the debtor.

(2) Section 8(b), derived from Bankruptcy Code Sections 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such person. The 2014 amendments clarify the meaning of section 8(b) by rewording it to follow more closely the wording of Bankruptcy Code sections 550(a), (b). Among other things, the amendments make clear that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as an action for a money judgment.

(3) Section 8(e)(2) as originally written created a defense to an action under section 4(a)(2) or 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The 2014 amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").

Choice of Law. The 2014 amendments add a new section 10, which sets forth a choice of law rule applicable to claims for relief of the nature governed by the act.

Series Organizations. A new section 11 provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the act, even if it is not treated as a person for other purposes. This change responds to the emergence of the "series organization" as a significant form of business organization.

Medium Neutrality. In order to accommodate modern technology, the references in the act to a "writing" have been replaced with "record," and related changes made.

Style. The 2014 amendments make a number of stylistic changes that are not intended to change the meaning of the act. For example, the amended act consistently uses the word "voidable" to denote a transfer or obligation for which the act provides a remedy. As originally written the act sometimes inconsistently used the word "fraudulent."

Matt Williams, Chairperson