

# SENATE BILL No. 172

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-18.

**Synopsis:** Uniform Voidable Transactions Act. Enacts the Uniform Voidable Transactions Act, governing the ability of a creditor to nullify certain transfers made by a debtor.

**Effective:** July 1, 2015.

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January 6, 2015, read first time and referred to Committee on Civil Law.

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First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 172



A BILL FOR AN ACT to amend the Indiana Code concerning commercial law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 32-18-2-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) This chapter
- 3 applies to all transfers made and obligations incurred after June 30,
- 4 1994, **and before July 1, 2015.**
- 5 (b) This chapter does not apply to a transfer made or an obligation
- 6 incurred before July 1, 1994, **or after June 30, 2015.**
- 7 SECTION 2. IC 32-18-2.5 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2015]:
- 10 **Chapter 2.5. Uniform Voidable Transactions Act**
- 11 **Sec. 1. (a) This chapter applies to all transfers made and**
- 12 **obligations incurred after June 30, 2015.**
- 13 **(b) This chapter does not apply to a transfer made or an**
- 14 **obligation incurred before July 1, 2015.**
- 15 **Sec. 2. The following definitions apply throughout this chapter:**
- 16 **(1) "Affiliate" means:**



- 1 (A) a person that directly or indirectly owns, controls, or  
 2 holds with power to vote, twenty percent (20%) or more of  
 3 the outstanding voting securities of the debtor, other than  
 4 a person that holds the securities:  
 5 (i) as a fiduciary or agent without sole discretionary  
 6 power to vote the securities; or  
 7 (ii) solely to secure a debt, if the person has not in fact  
 8 exercised the power to vote;  
 9 (B) a corporation, twenty percent (20%) or more of whose  
 10 outstanding voting securities are directly or indirectly  
 11 owned, controlled, or held with power to vote, by the  
 12 debtor or a person that directly or indirectly owns,  
 13 controls, or holds, with power to vote, twenty percent  
 14 (20%) or more of the outstanding voting securities of the  
 15 debtor, other than a person that holds the securities:  
 16 (i) as a fiduciary or agent without sole discretionary  
 17 power to vote the securities; or  
 18 (ii) solely to secure a debt, if the person has not in fact  
 19 exercised the power to vote;  
 20 (C) a person whose business is operated by the debtor  
 21 under a lease or other agreement, or a person substantially  
 22 all of whose assets are controlled by the debtor; or  
 23 (D) a person that operates the debtor's business under a  
 24 lease or other agreement or controls substantially all of the  
 25 debtor's assets.  
 26 (2) "Asset" means property of a debtor, but the term does not  
 27 include:  
 28 (A) property to the extent that it is encumbered by a valid  
 29 lien;  
 30 (B) property to the extent that it is generally exempt under  
 31 nonbankruptcy law, including property exempt from  
 32 execution under IC 34-55-10; or  
 33 (C) an interest in property held in tenancy by the entireties  
 34 to the extent it is not subject to process by a creditor  
 35 holding a claim against only one (1) tenant.  
 36 (3) "Claim", except as used in "claim for relief", means a  
 37 right to payment, whether or not the right is reduced to  
 38 judgment, liquidated, unliquidated, fixed, contingent,  
 39 matured, unmatured, disputed, undisputed, legal, equitable,  
 40 secured, or unsecured.  
 41 (4) "Creditor" means a person that has a claim.  
 42 (5) "Debt" means liability on a claim.



- 1 (6) "Debtor" means a person that is liable on a claim.  
2 (7) "Electronic" means relating to technology having  
3 electrical, digital, magnetic, wireless, optical, electromagnetic,  
4 or similar capabilities.  
5 (8) "Insider" includes:  
6 (A) if the debtor is an individual:  
7 (i) a relative of the debtor or of a general partner of the  
8 debtor;  
9 (ii) a partnership in which the debtor is a general  
10 partner;  
11 (iii) a general partner in a partnership described in item  
12 (ii); or  
13 (iv) a corporation of which the debtor is a director,  
14 officer, or person in control;  
15 (B) if the debtor is a corporation:  
16 (i) a director of the debtor;  
17 (ii) an officer of the debtor;  
18 (iii) a person in control of the debtor;  
19 (iv) a partnership in which the debtor is a general  
20 partner;  
21 (v) a general partner in a partnership described in item  
22 (iv); or  
23 (vi) a relative of a general partner, director, officer, or  
24 person in control of the debtor;  
25 (C) if the debtor is a partnership:  
26 (i) a general partner in the debtor;  
27 (ii) a relative of a general partner in, a general partner  
28 of, or a person in control of the debtor;  
29 (iii) another partnership in which the debtor is a general  
30 partner;  
31 (iv) a general partner in a partnership described in item  
32 (iii);  
33 (v) a person in control of the debtor; or  
34 (vi) an affiliate, or an insider of an affiliate as if the  
35 affiliate were the debtor; and  
36 (D) a managing agent of the debtor.  
37 (9) "Lien" means a charge against or an interest in property  
38 to secure payment of a debt or performance of an obligation,  
39 and includes a security interest created by agreement, a  
40 judicial lien obtained by legal or equitable process or  
41 proceedings, a common law lien, or a statutory lien.  
42 (10) "Organization" means a person other than an individual.



- 1 (11) "Person" means an individual, estate, business or  
 2 nonprofit entity, public corporation, government or  
 3 governmental subdivision, agency, or instrumentality, or  
 4 other legal entity.  
 5 (12) "Property" means anything that may be the subject of  
 6 ownership.  
 7 (13) "Record" means information that is inscribed on a  
 8 tangible medium or that is stored in an electronic or other  
 9 medium and is retrievable in perceivable form.  
 10 (14) "Relative" means an individual related by consanguinity  
 11 within the third degree as determined by the common law, a  
 12 spouse, or an individual related to a spouse within the third  
 13 degree as so determined, and includes an individual in an  
 14 adoptive relationship within the third degree.  
 15 (15) "Sign" means, with present intent to authenticate or  
 16 adopt a record:  
 17 (A) to execute or adopt a tangible symbol; or  
 18 (B) to attach to or logically associate with the record an  
 19 electronic symbol, sound, or process.  
 20 (16) "Transfer" means every mode, direct or indirect,  
 21 absolute or conditional, voluntary or involuntary, of disposing  
 22 of or parting with an asset or an interest in an asset, and  
 23 includes payment of money, release, lease, license, and  
 24 creation of a lien or other encumbrance.  
 25 (17) "Valid lien" means a lien that is effective against the  
 26 holder of a judicial lien subsequently obtained by legal or  
 27 equitable process or proceedings.
- 28 **Sec. 3. (a)** A debtor is insolvent if, at a fair valuation, the sum of  
 29 the debtor's debts is greater than the sum of the debtor's assets.  
 30 (b) A debtor that is generally not paying the debtor's debts as  
 31 they become due other than as a result of a bona fide dispute is  
 32 presumed to be insolvent. The presumption imposes on the party  
 33 against which the presumption is directed the burden of proving  
 34 that the nonexistence of insolvency is more probable than its  
 35 existence.  
 36 (c) Assets under this section do not include property that has  
 37 been transferred, concealed, or removed with intent to hinder,  
 38 delay, or defraud creditors or that has been transferred in a  
 39 manner making the transfer voidable under this chapter.  
 40 (d) Debts under this section do not include an obligation to the  
 41 extent the obligation is secured by a valid lien on property of the  
 42 debtor not included as an asset.



1           **Sec. 4. (a) Value is given for a transfer or an obligation if, in**  
 2 **exchange for the transfer or obligation, property is transferred or**  
 3 **an antecedent debt is secured or satisfied, but value does not**  
 4 **include an unperformed promise made otherwise than in the**  
 5 **ordinary course of the promisor's business to furnish support to**  
 6 **the debtor or another person.**

7           **(b) For the purposes of sections 5(a)(2), 5(b)(8), and 6 of this**  
 8 **chapter, a person gives a reasonably equivalent value if the person**  
 9 **acquires an interest of the debtor in an asset under a regularly**  
 10 **conducted, noncollusive foreclosure sale or execution of a power of**  
 11 **sale for the acquisition or disposition of the interest of the debtor**  
 12 **upon default under a mortgage, deed of trust, or security**  
 13 **agreement.**

14           **(c) A transfer is made for present value if the exchange between**  
 15 **the debtor and the transferee is intended by the debtor and**  
 16 **transferee to be contemporaneous and is in fact substantially**  
 17 **contemporaneous.**

18           **Sec. 5. (a) A transfer made or obligation incurred by a debtor is**  
 19 **voidable as to a creditor, whether the creditor's claim arose before**  
 20 **or after the transfer was made or the obligation was incurred, if**  
 21 **the debtor made the transfer or incurred the obligation:**

22           **(1) with actual intent to hinder, delay, or defraud any creditor**  
 23 **of the debtor; or**

24           **(2) without receiving a reasonably equivalent value in**  
 25 **exchange for the transfer or obligation, and the debtor:**

26           **(A) was engaged in or was about to engage in a business or**  
 27 **a transaction for which the remaining assets of the debtor**  
 28 **were unreasonably small in relation to the business or**  
 29 **transaction; or**

30           **(B) intended to incur, or believed or reasonably should**  
 31 **have believed that the debtor would incur, debts beyond**  
 32 **the debtor's ability to pay as the debts became due.**

33           **(b) In determining actual intent under subsection (a)(1),**  
 34 **consideration may be given, among other factors, to whether:**

35           **(1) the transfer or obligation was to an insider;**

36           **(2) the debtor retained possession or control of the property**  
 37 **transferred after the transfer;**

38           **(3) the transfer or obligation was disclosed or concealed;**

39           **(4) before the transfer was made or obligation was incurred,**  
 40 **the debtor had been sued or threatened with suit;**

41           **(5) the transfer was of substantially all the debtor's assets;**

42           **(6) the debtor absconded;**



- 1 (7) the debtor removed or concealed assets;  
 2 (8) the value of the consideration received by the debtor was  
 3 reasonably equivalent to the value of the asset transferred or  
 4 the amount of the obligation incurred;  
 5 (9) the debtor was insolvent or became insolvent shortly after  
 6 the transfer was made or the obligation was incurred;  
 7 (10) the transfer occurred shortly before or shortly after a  
 8 substantial debt was incurred; and  
 9 (11) the debtor transferred the essential assets of the business  
 10 to a lienor that transferred the assets to an insider of the  
 11 debtor.

12 (c) A creditor making a claim for relief under subsection (a) has  
 13 the burden of proving the elements of the claim for relief by a  
 14 preponderance of the evidence.

15 Sec. 6. (a) A transfer made or obligation incurred by a debtor is  
 16 voidable as to a creditor whose claim arose before the transfer was  
 17 made or the obligation was incurred if:

- 18 (1) the debtor made the transfer or incurred the obligation  
 19 without receiving a reasonably equivalent value in exchange  
 20 for the transfer or obligation; and  
 21 (2) the debtor was insolvent at that time or the debtor became  
 22 insolvent as a result of the transfer or obligation.

23 (b) A transfer made by a debtor is voidable as to a creditor  
 24 whose claim arose before the transfer was made if:

- 25 (1) the transfer was made to an insider for an antecedent  
 26 debt;  
 27 (2) the debtor was insolvent at that time; and  
 28 (3) the insider had reasonable cause to believe that the debtor  
 29 was insolvent.

30 (c) Subject to section 3(b) of this chapter, a creditor making a  
 31 claim for relief under this section has the burden of proving the  
 32 elements of the claim for relief by a preponderance of the evidence.

33 Sec. 7. For the purposes of this chapter:

- 34 (1) a transfer is made:  
 35 (A) with respect to an asset that is real property other than  
 36 a fixture, but including the interest of a seller or purchaser  
 37 under a contract for the sale of the asset, when the transfer  
 38 is so far perfected that a good faith purchaser of the asset  
 39 from the debtor against which applicable law permits the  
 40 transfer to be perfected cannot acquire an interest in the  
 41 asset that is superior to the interest of the transferee; and



- 1           **(B) with respect to an asset that is not real property or that**  
 2           **is a fixture, when the transfer is so far perfected that a**  
 3           **creditor on a simple contract cannot acquire a judicial lien**  
 4           **otherwise than under this chapter that is superior to the**  
 5           **interest of the transferee;**  
 6           **(2) if applicable law permits the transfer to be perfected as**  
 7           **provided in subdivision (1) and the transfer is not perfected**  
 8           **before the commencement of an action for relief under this**  
 9           **chapter, the transfer is deemed made immediately before the**  
 10           **commencement of the action;**  
 11           **(3) if applicable law does not permit the transfer to be**  
 12           **perfected as provided in subdivision (1), the transfer is made**  
 13           **when it becomes effective between the debtor and the**  
 14           **transferee;**  
 15           **(4) a transfer is not made until the debtor has acquired rights**  
 16           **in the asset transferred; and**  
 17           **(5) an obligation is incurred:**  
 18               **(A) if oral, when it becomes effective between the parties;**  
 19               **or**  
 20               **(B) if evidenced by a record, when the record signed by the**  
 21               **obligor is delivered to or for the benefit of the obligee.**  
 22           **Sec. 8. (a) In an action for relief against a transfer or obligation**  
 23           **under this chapter, a creditor, subject to the limitations in section**  
 24           **9 of this chapter, may obtain:**  
 25               **(1) avoidance of the transfer or obligation to the extent**  
 26               **necessary to satisfy the creditor's claim;**  
 27               **(2) an attachment or other provisional remedy against the**  
 28               **asset transferred or other property of the transferee if**  
 29               **available under applicable law; and**  
 30               **(3) subject to applicable principles of equity and in**  
 31               **accordance with the Indiana rules of trial procedure:**  
 32                   **(A) an injunction against further disposition by the debtor**  
 33                   **or a transferee, or both, of the asset transferred or of other**  
 34                   **property;**  
 35                   **(B) appointment of a receiver to take charge of the asset**  
 36                   **transferred or of other property of the transferee; or**  
 37                   **(C) any other relief the circumstances may require.**  
 38           **(b) If a creditor has obtained a judgment on a claim against the**  
 39           **debtor, the creditor, if the court so orders, may levy execution on**  
 40           **the asset transferred or its proceeds.**





1           **Sec. 9. (a) A transfer or obligation is not voidable under section**  
 2 **5 of this chapter against a person that took in good faith and for a**  
 3 **reasonably equivalent value given the debtor or against any**  
 4 **subsequent transferee or obligee.**

5           **(b) To the extent a transfer is avoidable in an action by a**  
 6 **creditor seeking avoidance of the transfer or obligation under**  
 7 **section 8 of this chapter, the following rules apply:**

8           **(1) Except as otherwise provided in this section, the creditor**  
 9 **may recover judgment for the value of the asset transferred,**  
 10 **as adjusted under subsection (c), or the amount necessary to**  
 11 **satisfy the creditor's claim, whichever is less. The judgment**  
 12 **may be entered against:**

13           **(A) the first transferee of the asset or the person for whose**  
 14 **benefit the transfer was made; or**

15           **(B) an immediate or mediate transferee of the first**  
 16 **transferee, other than:**

17           **(i) a good faith transferee that took for value; or**

18           **(ii) an immediate or mediate good faith transferee of a**  
 19 **person described in item (i).**

20           **(2) Recovery under section 8 of this chapter of or from the**  
 21 **asset transferred or its proceeds, by levy or otherwise, is**  
 22 **available only against a person described in subdivision (1).**

23           **(c) If the judgment under subsection (b) is based upon the value**  
 24 **of the asset transferred, the judgment must be for an amount equal**  
 25 **to the value of the asset at the time of the transfer, subject to**  
 26 **adjustment as the equities may require.**

27           **(d) Notwithstanding voidability of a transfer or an obligation**  
 28 **under this chapter, a good faith transferee or obligee is entitled, to**  
 29 **the extent of the value given the debtor for the transfer or**  
 30 **obligation, to:**

31           **(1) a lien on or a right to retain an interest in the asset**  
 32 **transferred;**

33           **(2) enforcement of an obligation incurred; or**

34           **(3) a reduction in the amount of the liability on the judgment.**

35           **(e) A transfer is not voidable under section 5(a)(2) or 6 of this**  
 36 **chapter if the transfer results from:**

37           **(1) termination of a lease upon default by the debtor when the**  
 38 **termination is under the lease and applicable law; or**

39           **(2) enforcement of a security interest in compliance with**  
 40 **IC 26-1-9.1, other than acceptance of collateral in full or**  
 41 **partial satisfaction of the obligation it secures.**

42           **(f) A transfer is not voidable under section 6(b) of this chapter:**



1 (1) to the extent the insider gave new value to or for the  
 2 benefit of the debtor after the transfer was made, except to  
 3 the extent the new value was secured by a valid lien;

4 (2) if made in the ordinary course of business or financial  
 5 affairs of the debtor and the insider; or

6 (3) if made under a good faith effort to rehabilitate the debtor  
 7 and the transfer secured present value given for that purpose  
 8 as well as an antecedent debt of the debtor.

9 (g) The following rules determine the burden of proving matters  
 10 referred to in this section:

11 (1) A party that seeks to invoke subsection (a), (d), (e), or (f)  
 12 has the burden of proving the applicability of that subsection.

13 (2) Except as otherwise provided in subdivisions (3) and (4),  
 14 the creditor has the burden of proving each applicable  
 15 element of subsection (b) or (c).

16 (3) The transferee has the burden of proving the applicability  
 17 to the transferee of subsection (b)(1)(A).

18 (4) A party that seeks adjustment under subsection (c) has the  
 19 burden of proving the adjustment.

20 (h) The standard of proof required to establish matters referred  
 21 to in this section is preponderance of the evidence.

22 **Sec. 10.** A claim for relief with respect to a transfer or obligation  
 23 under this chapter must be commenced:

24 (1) for a claim under section 5(a)(1), not later than:

25 (A) four (4) years after the transfer was made or the  
 26 obligation was incurred; or

27 (B) one (1) year after the transfer or obligation was or  
 28 could reasonably have been discovered by the claimant;

29 whichever is later;

30 (2) for a claim under section 5(a)(2) or 6(a) of this chapter, not  
 31 later than four (4) years after the transfer was made or the  
 32 obligation was incurred; or

33 (3) for a claim under section 6(b) of this chapter, not later  
 34 than one (1) year after the transfer was made.

35 **Sec. 11.** (a) The following rules determine a debtor's location:

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

38 (2) A debtor that is an organization and has only one (1) place  
 39 of business is located at its place of business.

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



1           (b) A claim for relief in the nature of a claim for relief under  
2 this chapter is governed by the law of the jurisdiction in which the  
3 debtor is located when the transfer is made or the obligation is  
4 incurred.

5           Sec. 12. (a) The following definitions apply throughout this  
6 section:

7           (1) "Protected series" means an arrangement, however  
8 denominated, created by a series organization that, under the  
9 law under which the series organization is organized, has the  
10 characteristics set forth in subdivision (2).

11           (2) "Series organization" means an organization that, under  
12 the law under which it is organized, has the following  
13 characteristics:

14           (A) The organic record of the organization provides for  
15 creation by the organization of one (1) or more protected  
16 series, however denominated, with respect to specified  
17 property of the organization, and for records to be  
18 maintained for each protected series that identify the  
19 property of or associated with the protected series.

20           (B) Debt incurred or existing with respect to the activities  
21 of, or property of or associated with, a particular protected  
22 series is enforceable against the property of or associated  
23 with the protected series only, and not against the property  
24 of or associated with the organization or other protected  
25 series of the organization.

26           (C) Debt incurred or existing with respect to the activities  
27 or property of the organization is enforceable against the  
28 property of the organization only, and not against the  
29 property of or associated with a protected series of the  
30 organization.

31           (b) A series organization and each protected series of the  
32 organization is a separate person for purposes of this chapter, even  
33 if for other purposes a protected series is not a person separate  
34 from the organization or other protected series of the organization.

35           Sec. 13. Unless superseded by the provisions of this chapter, the  
36 principles of law and equity, including the law merchant and the  
37 law relating to principal and agent, estoppel, laches, fraud,  
38 misrepresentation, duress, coercion, mistake, insolvency, or other  
39 validating or invalidating cause, supplement its provisions.

40           Sec. 14. This chapter shall be applied and construed to  
41 effectuate its general purpose to make uniform the law with respect  
42 to the subject of this chapter among states enacting it.



1       **Sec. 15. This chapter modifies, limits, or supersedes the federal**  
2       **Electronic Signatures in Global and National Commerce Act, 15**  
3       **U.S.C. 7001 et seq., but does not modify, limit, or supersede Section**  
4       **101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic**  
5       **delivery of any of the notices described in Section 103(b) of that**  
6       **act, 15 U.S.C. 7003(b).**

