



February 10, 2015

SENATE BILL No. 172

DIGEST OF SB 172 (Updated February 9, 2015 12:07 pm - DI 106)

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.

Bray

January 6, 2015, read first time and referred to Committee on Civil Law.
February 9, 2015, amended, reported favorably — Do Pass.

SB 172—LS 6273/DI 106



February 10, 2015

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 32-18-2-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) As used in this
3 chapter, "asset" means property of a debtor:

4 (b) The term does not include any of the following:

5 (1) Property, to the extent the property is encumbered by a valid
6 lien.

7 (2) Property, to the extent the property is generally exempt under
8 law other than federal bankruptcy law.

9 (3) An interest in property held in tenancy by the entirety to the
10 extent the interest is not subject to process by a creditor holding
11 a claim against only one (1) tenant.

12 The following definitions apply throughout this chapter:

13 (1) "Affiliate" means:

14 (A) a person that directly or indirectly owns, controls, or
15 holds with power to vote, twenty percent (20%) or more of
16 the outstanding voting securities of the debtor, other than

SB 172—LS 6273/DI 106



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



1 or similar capabilities.

2 (8) "Insider" includes:

3 (A) if the debtor is an individual:

4 (i) a relative of the debtor or of a general partner of the
5 debtor;

6 (ii) a partnership in which the debtor is a general
7 partner;

8 (iii) a general partner in a partnership described in item
9 (ii); or

10 (iv) a corporation of which the debtor is a director,
11 officer, or person in control;

12 (B) if the debtor is a corporation:

13 (i) a director of the debtor;

14 (ii) an officer of the debtor;

15 (iii) a person in control of the debtor;

16 (iv) a partnership in which the debtor is a general
17 partner;

18 (v) a general partner in a partnership described in item
19 (iv); or

20 (vi) a relative of a general partner, director, officer, or
21 person in control of the debtor;

22 (C) if the debtor is a partnership:

23 (i) a general partner in the debtor;

24 (ii) a relative of a general partner in, a general partner
25 of, or a person in control of the debtor;

26 (iii) another partnership in which the debtor is a general
27 partner;

28 (iv) a general partner in a partnership described in item
29 (iii);

30 (v) a person in control of the debtor; or

31 (vi) an affiliate, or an insider of an affiliate as if the
32 affiliate were the debtor; and

33 (D) a managing agent of the debtor.

34 (9) "Lien" means a charge against or an interest in property
35 to secure payment of a debt or performance of an obligation,
36 and includes a security interest created by agreement, a
37 judicial lien obtained by legal or equitable process or
38 proceedings, a common law lien, or a statutory lien.

39 (10) "Organization" means a person other than an individual.

40 (11) "Person" means an individual, estate, partnership,
41 business or nonprofit entity, public corporation, government
42 or governmental subdivision, agency, or instrumentality, or



1 other legal entity.

2 (12) "Property" means anything that may be the subject of
3 ownership.

4 (13) "Record" means information that is inscribed on a
5 tangible medium or that is stored in an electronic or other
6 medium and is retrievable in perceivable form.

7 (14) "Relative" means an individual related by consanguinity
8 within the third degree as determined by the common law, a
9 spouse, or an individual related to a spouse within the third
10 degree as so determined, and includes an individual in an
11 adoptive relationship within the third degree.

12 (15) "Sign" means, with present intent to authenticate or
13 adopt a record:

14 (A) to execute or adopt a tangible symbol; or

15 (B) to attach to or logically associate with the record an
16 electronic symbol, sound, or process.

17 (16) "Transfer" means every mode, direct or indirect,
18 absolute or conditional, voluntary or involuntary, of disposing
19 of or parting with an asset or an interest in an asset, and
20 includes payment of money, release, lease, license, and
21 creation of a lien or other encumbrance.

22 (17) "Valid lien" means a lien that is effective against the
23 holder of a judicial lien subsequently obtained by legal or
24 equitable process or proceedings.

25 SECTION 2. IC 32-18-2-3 IS REPEALED [EFFECTIVE JULY 1,
26 2015]. Sec. 3: As used in this chapter, "claim" means a right to
27 payment, whether the right is:

28 (1) reduced to judgment or not;

29 (2) liquidated or unliquidated;

30 (3) fixed or contingent;

31 (4) matured or unmatured;

32 (5) disputed or undisputed;

33 (6) legal or not;

34 (7) equitable or not; or

35 (8) secured or unsecured.

36 SECTION 3. IC 32-18-2-4 IS REPEALED [EFFECTIVE JULY 1,
37 2015]. Sec. 4: As used in this chapter, "creditor" means a person who
38 has a claim.

39 SECTION 4. IC 32-18-2-5 IS REPEALED [EFFECTIVE JULY 1,
40 2015]. Sec. 5: As used in this chapter, "debt" means liability on a claim.

41 SECTION 5. IC 32-18-2-6 IS REPEALED [EFFECTIVE JULY 1,
42 2015]. Sec. 6: As used in this chapter, "debtor" means a person who is



1 liable on a claim:

2 SECTION 6. IC 32-18-2-7 IS REPEALED [EFFECTIVE JULY 1,
3 2015]. Sec. 7: (a) As used in this chapter, "lien" means a charge against
4 or an interest in property to secure payment of a debt or performance
5 of an obligation:

6 (b) The term includes any of the following:

7 (1) A security interest created by agreement.

8 (2) A judicial lien obtained by legal or equitable process or
9 proceedings.

10 (3) A common law lien.

11 (4) A statutory lien.

12 SECTION 7. IC 32-18-2-8 IS REPEALED [EFFECTIVE JULY 1,
13 2015]. Sec. 8: As used in this chapter, "person" means an individual;
14 a partnership; a corporation; a limited liability company; an association;
15 an organization; a government; a governmental subdivision or agency;
16 a business trust; an estate; a trust; or any other legal or commercial
17 entity.

18 SECTION 8. IC 32-18-2-9 IS REPEALED [EFFECTIVE JULY 1,
19 2015]. Sec. 9: As used in this chapter, "property" means anything that
20 can be the subject of ownership:

21 SECTION 9. IC 32-18-2-10 IS REPEALED [EFFECTIVE JULY 1,
22 2015]. Sec. 10: (a) As used in this chapter, "transfer" means any mode
23 of disposing of or parting with an asset or an interest in an asset;
24 whether the mode is direct or indirect; absolute or conditional; or
25 voluntary or involuntary.

26 (b) The term includes payment of money, release, lease, and
27 creation of a lien or other encumbrance.

28 SECTION 10. IC 32-18-2-11 IS REPEALED [EFFECTIVE JULY
29 1, 2015]. Sec. 11: As used in this chapter, "valid lien" means a lien that
30 is effective against the holder of a judicial lien subsequently obtained
31 by legal or equitable process or proceedings.

32 SECTION 11. IC 32-18-2-12 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) For purposes of
34 this section, assets do not include property that has been:

35 (1) transferred, concealed, or removed with intent to hinder,
36 delay, or defraud creditors; or

37 (2) transferred in a manner making the transfer voidable under
38 this chapter.

39 (b) For purposes of this section, debts do not include an obligation
40 to the extent it is secured by a valid lien on property of the debtor not
41 included as an asset under this section.

42 (c) A debtor is insolvent if, **at a fair valuation**, the sum of the



1 debtor's debts is greater than ~~all~~ **the sum** of the debtor's assets. ~~at a fair~~
 2 ~~valuation.~~

3 (d) A debtor ~~who~~ **that** is generally not paying the debtor's debts as
 4 they become due, **other than as a result of a bona fide dispute**, is
 5 presumed to be insolvent. This presumption imposes upon the party
 6 against ~~whom~~ **which** the presumption is directed the burden of proving
 7 that the nonexistence of insolvency is more probable than its existence.

8 (e) ~~A partnership is insolvent if the sum of the partnership's debts is~~
 9 ~~greater than the aggregate, at a fair valuation, of all of the partnership's~~
 10 ~~assets and the sum of the excess of the value of each general partner's~~
 11 ~~nonpartnership assets over each general partner's nonpartnership debts.~~

12 SECTION 12. IC 32-18-2-14 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. (a) A transfer made
 14 or an obligation incurred by a debtor is **fraudulent voidable** as to a
 15 creditor, whether the creditor's claim arose before or after the transfer
 16 was made or the obligation was incurred, if the debtor made the
 17 transfer or incurred the obligation:

18 (1) with actual intent to hinder, delay, or defraud any creditor of
 19 the debtor; or

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

22 (A) was engaged or was about to engage in a business or a
 23 transaction for which the remaining assets of the debtor were
 24 unreasonably small in relation to the business or transaction;
 25 or

26 (B) intended to incur or believed or reasonably should have
 27 believed that the debtor would incur debts beyond the debtor's
 28 ability to pay as the debts became due.

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

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

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

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

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

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

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

39 (7) **the debtor removed or concealed assets;**

40 (8) **the value of the consideration received by the debtor was**
 41 **reasonably equivalent to the value of the asset transferred or**
 42 **the amount of the obligation incurred;**



1 **(9) the debtor was insolvent or became insolvent shortly after**
 2 **the transfer was made or the obligation was incurred;**

3 **(10) the transfer occurred shortly before or shortly after a**
 4 **substantial debt was incurred; and**

5 **(11) the debtor transferred the essential assets of the business**
 6 **to a lienor that transferred the assets to an insider of the**
 7 **debtor.**

8 **(c) A creditor making a claim for relief under this section has**
 9 **the burden of proving the elements of the claim for relief by a**
 10 **preponderance of the evidence.**

11 SECTION 13. IC 32-18-2-15 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. **(a)** A transfer made
 13 or an obligation incurred by a debtor is ~~fraudulent~~ **voidable** as to a
 14 creditor whose claim arose before the transfer was made or the
 15 obligation was incurred if:

16 (1) the debtor made the transfer or incurred the obligation without
 17 receiving a reasonably equivalent value in exchange for the
 18 transfer or obligation; and

19 (2) the debtor:

20 (A) was insolvent at that time; or

21 (B) became insolvent as a result of the transfer or obligation.

22 **(b) A transfer made by a debtor is voidable as to a creditor**
 23 **whose claim arose before the transfer was made if the transfer was**
 24 **made to an insider for an antecedent debt, the debtor was insolvent**
 25 **at that time, and the insider had reasonable cause to believe that**
 26 **the debtor was insolvent.**

27 **(c) Subject to section 12(d) of this chapter, a creditor making a**
 28 **claim for relief under this section has the burden of proving the**
 29 **elements of the claim for relief by a preponderance of the evidence.**

30 SECTION 14. IC 32-18-2-16 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. The following
 32 apply for purposes of this chapter:

33 (1) A transfer is made:

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

41 (B) with respect to an asset that is not real property or that is
 42 a fixture, when the transfer is so far perfected that a creditor on



- 1 a simple contract cannot acquire a judicial lien (other than
2 under this chapter) that is superior to the interest of the
3 transferee.
- 4 (2) If applicable law permits a transfer to be perfected under
5 subdivision (1) and the transfer is not so perfected before the
6 commencement of an action for relief under this chapter, the
7 transfer is considered made immediately before the
8 commencement of the action.
- 9 (3) If applicable law does not permit a transfer to be perfected
10 under subdivision (1), the transfer is made when it becomes
11 effective between the debtor and the transferee.
- 12 (4) A transfer is not made until the debtor has acquired rights in
13 the asset transferred.
- 14 (5) An obligation is incurred:
- 15 (A) if oral, when it becomes effective between the parties; or
16 (B) if evidenced by a ~~writing~~, **record**, when the ~~writing~~
17 **executed record signed** by the obligor is delivered to or for
18 the benefit of the obligee.
- 19 SECTION 15. IC 32-18-2-18 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. (a) A transfer or an
21 obligation is not voidable under section 14(1) of this chapter against a
22 person ~~who~~ **that** took in good faith and for a reasonably equivalent
23 value **given the debtor** or against any subsequent transferee or obligee.
- 24 (b) **To the extent that a transfer is avoidable in an action by a**
25 **creditor under section 17(a)(1) of this chapter, the following rules**
26 **apply:**
- 27 (1) Except as otherwise provided in this chapter, ~~to the extent a~~
28 ~~transfer is voidable in an action by a creditor under section~~
29 ~~17(a)(1) of this chapter~~, the creditor may recover judgment for the
30 value of the asset transferred, as adjusted under subsection (c), or
31 the amount necessary to satisfy the creditor's claim, whichever is
32 less. The judgment may be entered against:
- 33 (1) (A) the first transferee of the asset or the person for whose
34 benefit the transfer was made; or
- 35 (2) (B) **any subsequent transferee other than an immediate or**
36 **mediate transferee of the first transferee, other than:**
- 37 (i) a good faith transferee ~~who~~ **that** took for value; or
38 (ii) ~~from any subsequent transferee:~~ **an immediate or**
39 **mediate good faith transferee of a person described in**
40 **item (i).**
- 41 (2) **Recovery under section 17(a)(1) or 17 (a)(2) of or from the**
42 **asset transferred or its proceeds, by levy or otherwise, is**



- 1 **available only against a person described in subdivision (1).**
 2 (c) If the judgment under subsection (b) is based upon the value of
 3 the asset transferred, the judgment must be for an amount equal to the
 4 value of the asset at the time of the transfer, subject to adjustment as
 5 the equities may require.
 6 (d) Notwithstanding voidability of a transfer or an obligation under
 7 this chapter, a good faith transferee or obligee is entitled, to the extent
 8 of the value given the debtor for the transfer or obligation, to:
 9 (1) a lien on or a right to retain **any an** interest in the asset
 10 transferred;
 11 (2) enforcement of **any an** obligation incurred; or
 12 (3) a reduction in the amount of the liability on the judgment.
 13 (e) A transfer is not voidable under section 14(2) or section 15 of
 14 this chapter if the transfer results from:
 15 (1) termination of a lease upon default by the debtor when the
 16 termination is permitted by the lease and applicable law; or
 17 (2) enforcement of a security interest in compliance with Article
 18 9 of the Uniform Commercial Code, **other than acceptance of**
 19 **collateral in full or partial satisfaction of the obligation it**
 20 **secures.**
 21 (f) **A transfer is not voidable under section 15(a)(2) of this**
 22 **chapter:**
 23 (1) **to the extent the insider gave new value to or for the**
 24 **benefit of the debtor after the transfer was made, except to**
 25 **the extent the new value was secured by a valid lien;**
 26 (2) **if made in the ordinary course of business or financial**
 27 **affairs of the debtor and the insider; or**
 28 (3) **if made under a good faith effort to rehabilitate the debtor**
 29 **and the transfer secured present value given for that purpose**
 30 **as well as an antecedent debt of the debtor.**
 31 (g) **The following rules determine the burden of proving matters**
 32 **referred to in this section:**
 33 (1) **A party that seeks to invoke subsection (a), (d), (e), or (f)**
 34 **has the burden of proving the applicability of that subsection.**
 35 (2) **Except as otherwise provided in subdivisions (3) and (4),**
 36 **the creditor has the burden of proving each applicable**
 37 **element of subsection (b) or (c).**
 38 (3) **The transferee has the burden of proving the applicability**
 39 **to the transferee of subsection (b)(1)(A).**
 40 (4) **A party that seeks adjustment under subsection (c) has the**
 41 **burden of proving the adjustment.**



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

3 SECTION 16. IC 32-18-2-19 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. A ~~cause of action~~
 5 **claim for relief** with respect to a ~~fraudulent~~ transfer or obligation
 6 under this chapter is extinguished unless brought as follows:

7 (1) If brought under section 14(1) of this chapter, an action is
 8 extinguished unless brought not later than the later of the
 9 following:

10 (A) Four (4) years after the transfer was made or the obligation
 11 was incurred.

12 (B) One (1) year after the transfer or obligation was or could
 13 reasonably have been discovered by the claimant.

14 (2) If brought under section 14(2) or 15(1) of this chapter, an
 15 action is extinguished unless it is brought not later than four (4)
 16 years after the transfer was made or the obligation was incurred.

17 SECTION 17. IC 32-18-2-19.3 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2015]: **Sec. 19.3. (a) The following rules**
 20 **determine a debtor's location:**

21 **(1) A debtor who is an individual is located at the individual's**
 22 **principal residence.**

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

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

27 **(b) A claim for relief in the nature of a claim for relief under**
 28 **this chapter is governed by the law of the jurisdiction in which the**
 29 **debtor is located when the transfer is made or the obligation is**
 30 **incurred.**

31 SECTION 18. IC 32-18-2-19.5 IS ADDED TO THE INDIANA
 32 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2015]: **Sec. 19.5. (a) The following definitions**
 34 **apply throughout this section:**

35 **(1) "Protected series" means an arrangement, however**
 36 **denominated, created by a series organization that, under the**
 37 **law under which the series organization is organized, has the**
 38 **characteristics set forth in subdivision (2).**

39 **(2) "Series organization" means an organization that, under**
 40 **the law under which it is organized, has the following**
 41 **characteristics:**



- 1 **(A) The organic record of the organization provides for**
 2 **creation by the organization of one (1) or more protected**
 3 **series, however denominated, with respect to specified**
 4 **property of the organization, and for records to be**
 5 **maintained for each protected series that identify the**
 6 **property of or associated with the protected series.**
 7 **(B) Debt incurred or existing with respect to the activities**
 8 **of, or property of or associated with, a particular protected**
 9 **series is enforceable against the property of or associated**
 10 **with the protected series only, and not against the property**
 11 **of or associated with the organization or other protected**
 12 **series of the organization.**
 13 **(C) Debt incurred or existing with respect to the activities**
 14 **or property of the organization is enforceable against the**
 15 **property of the organization only, and not against the**
 16 **property of or associated with a protected series of the**
 17 **organization.**
 18 **(b) A series organization and each protected series of the**
 19 **organization is a separate person for purposes of this chapter, even**
 20 **if for other purposes a protected series is not a person separate**
 21 **from the organization or other protected series of the organization.**
 22 SECTION 19. IC 32-18-2-22 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2015]: **Sec. 22. This chapter modifies, limits,**
 25 **or supersedes the federal Electronic Signatures in Global and**
 26 **National Commerce Act, 15 U.S.C. 7001 et seq., but does not**
 27 **modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.**
 28 **7001(c), or authorize electronic delivery of any of the notices**
 29 **described in Section 103(b) of that act, 15 U.S.C. 7003(b).**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 172, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 14.

Page 1, line 15, delete "Sec. 2.", begin a new paragraph and insert:
"SECTION 1. IC 32-18-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) As used in this chapter, "asset" means property of a debtor:

(b) The term does not include any of the following:

(1) Property, to the extent the property is encumbered by a valid lien.

(2) Property, to the extent the property is generally exempt under law other than federal bankruptcy law.

(3) An interest in property held in tenancy by the entireties to the extent the interest is not subject to process by a creditor holding a claim against only one (1) tenant."

Page 1, line 15, beginning with "The" begin a new line blocked left.

Page 4, line 1, after "estate," insert "**partnership**,".

Page 4, delete lines 28 through 42, begin a new paragraph and insert:

"SECTION 2. IC 32-18-2-3 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 3: As used in this chapter, "claim" means a right to payment, whether the right is:

(1) reduced to judgment or not;

(2) liquidated or unliquidated;

(3) fixed or contingent;

(4) matured or unmatured;

(5) disputed or undisputed;

(6) legal or not;

(7) equitable or not; or

(8) secured or unsecured.

SECTION 3. IC 32-18-2-4 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 4: As used in this chapter, "creditor" means a person who has a claim.

SECTION 4. IC 32-18-2-5 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 5: As used in this chapter, "debt" means liability on a claim.

SECTION 5. IC 32-18-2-6 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 6: As used in this chapter, "debtor" means a person who is liable on a claim.



SECTION 6. IC 32-18-2-7 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 7: (a) As used in this chapter, "lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation.

(b) The term includes any of the following:

- (1) A security interest created by agreement.
- (2) A judicial lien obtained by legal or equitable process or proceedings.
- (3) A common law lien.
- (4) A statutory lien.

SECTION 7. IC 32-18-2-8 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 8: As used in this chapter, "person" means an individual; a partnership; a corporation; a limited liability company; an association; an organization; a government; a governmental subdivision or agency; a business trust; an estate; a trust; or any other legal or commercial entity.

SECTION 8. IC 32-18-2-9 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 9: As used in this chapter, "property" means anything that can be the subject of ownership.

SECTION 9. IC 32-18-2-10 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 10: (a) As used in this chapter, "transfer" means any mode of disposing of or parting with an asset or an interest in an asset, whether the mode is direct or indirect, absolute or conditional, or voluntary or involuntary.

(b) The term includes payment of money; release; lease; and creation of a lien or other encumbrance.

SECTION 10. IC 32-18-2-11 IS REPEALED [EFFECTIVE JULY 1, 2015]. Sec. 11: As used in this chapter, "valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

SECTION 11. IC 32-18-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 12. (a) For purposes of this section, assets do not include property that has been:

- (1) transferred, concealed, or removed with intent to hinder, delay, or defraud creditors; or
- (2) transferred in a manner making the transfer voidable under this chapter.

(b) For purposes of this section, debts do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset under this section.



(c) A debtor is insolvent if, **at a fair valuation**, the sum of the debtor's debts is greater than ~~all the sum~~ of the debtor's assets. ~~at a fair valuation~~.

(d) A debtor ~~who~~ **that** is generally not paying the debtor's debts as they become due, **other than as a result of a bona fide dispute**, is presumed to be insolvent. This presumption imposes upon the party against ~~whom~~ **which** the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(e) ~~A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over each general partner's nonpartnership debts."~~

Delete pages 5 through 8, begin a new paragraph and insert:

"SECTION 12. IC 32-18-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 14. **(a)** A transfer made or an obligation incurred by a debtor is ~~fraudulent~~ **voidable** as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (B) intended to incur or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as the debts became due.

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

- (1) the transfer or obligation was to an insider;**
- (2) the debtor retained possession or control of the property transferred after the transfer;**
- (3) the transfer or obligation was disclosed or concealed;**
- (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;**
- (5) the transfer was of substantially all the debtor's assets;**
- (6) the debtor absconded;**
- (7) the debtor removed or concealed assets;**



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

(c) A creditor making a claim for relief under this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 13. IC 32-18-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 15. **(a)** A transfer made or an obligation incurred by a debtor is ~~fraudulent~~ **voidable** as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

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

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

(c) Subject to section 12(d) of this chapter, a creditor making a claim for relief under this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 14. IC 32-18-2-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 16. The following apply for purposes of this chapter:

- (1) A transfer is made:
 - (A) with respect to an asset that is real property other than a fixture (but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be



perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien (other than under this chapter) that is superior to the interest of the transferee.

(2) If applicable law permits a transfer to be perfected under subdivision (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is considered made immediately before the commencement of the action.

(3) If applicable law does not permit a transfer to be perfected under subdivision (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a ~~writing~~, **record**, when the ~~writing executed record signed~~ by the obligor is delivered to or for the benefit of the obligee.

SECTION 15. IC 32-18-2-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. (a) A transfer or an obligation is not voidable under section 14(1) of this chapter against a person ~~who~~ **that** took in good faith and for a reasonably equivalent value **given the debtor** or against any subsequent transferee or obligee.

(b) **To the extent that a transfer is avoidable in an action by a creditor under section 17(a)(1) of this chapter, the following rules apply:**

(1) Except as otherwise provided in this chapter, ~~to the extent a transfer is voidable in an action by a creditor under section 17(a)(1) of this chapter,~~ the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

(2) ~~(B)~~ **(B)** any subsequent transferee other than an immediate or mediate transferee of the first transferee, other than:

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



(ii) ~~from any subsequent transferee:~~ **an immediate or mediate good faith transferee of a person described in item (i).**

(2) Recovery under section 17(a)(1) or 17 (a)(2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subdivision (1).

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

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

- (1) a lien on or a right to retain ~~any~~ **an** interest in the asset transferred;
- (2) enforcement of ~~any~~ **an** obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section 14(2) or section 15 of this chapter if the transfer results from:

- (1) termination of a lease upon default by the debtor when the termination is permitted by the lease and applicable law; or
- (2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, **other than acceptance of collateral in full or partial satisfaction of the obligation it secures.**

(f) A transfer is not voidable under section 15(a)(2) of this chapter:

- (1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;**
- (2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or**
- (3) if made under a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.**

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

- (1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.**
- (2) Except as otherwise provided in subdivisions (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).**



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

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

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

SECTION 16. IC 32-18-2-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. A ~~cause of action claim for relief~~ with respect to a ~~fraudulent~~ transfer or obligation under this chapter is extinguished unless brought as follows:

(1) If brought under section 14(1) of this chapter, an action is extinguished unless brought not later than the later of the following:

(A) Four (4) years after the transfer was made or the obligation was incurred.

(B) One (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(2) If brought under section 14(2) or 15(1) of this chapter, an action is extinguished unless it is brought not later than four (4) years after the transfer was made or the obligation was incurred."

Page 9, delete lines 1 through 34.

Page 9, line 35, delete "Sec. 11.", begin a new paragraph and insert: "SECTION 17. IC 32-18-2-19.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 19.3.**"

Page 10, line 5, delete "Sec. 12.", begin a new paragraph and insert: "SECTION 18. IC 32-18-2-19.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 19.5.**"

Page 10, delete lines 35 through 42.

Page 11, line 1, delete "Sec. 15.", begin a new paragraph and insert: "SECTION 21. IC 32-18-2-22 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 22.**"

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 172 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 8, Nays 0.

SB 172—LS 6273/DI 106

