

HOUSE No. 4984

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, August 5, 2024.

The committee on The Judiciary, to whom was referred the petition (accompanied by bill, House, No. 1716) of Alice Hanlon Peisch relative to uniform voidable transactions, reports recommending that the accompanying bill (House, No. 4984) ought to pass.

For the committee,

MICHAEL S. DAY.

HOUSE No. 4984

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to the uniform voidable transactions act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 109A of the General Laws is hereby amended by striking out the
2 title, as so appearing, and inserting in place thereof the following title:- UNIFORM VOIDABLE
3 TRANSACTIONS ACT.

4 SECTION 2. Section 1 of chapter 109A, as appearing in the 2022 Official Edition, is
5 hereby amended by striking out, in lines 1 and 2, the words “may be cited as the Uniform
6 Fraudulent Transfer Act” and inserting in place thereof the following words:- , which was
7 formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable
8 Transactions Act.

9 SECTION 3. Section 2 of said chapter 109A, as so appearing, is hereby amended by
10 inserting, in line 17, after the word “sole” the following word:- discretionary.

11 SECTION 4. Said section 2 of said chapter 109A is hereby further amended by inserting
12 after the definition of “debtor” the following definition:-

13 “Electronic”, relating to technology having electrical, digital, magnetic, wireless, optical,
14 electromagnetic or similar capabilities.

15 SECTION 5. Said section 2 of said chapter 109A is hereby further amended by striking
16 out the definition of “person” and inserting in place thereof the following definitions:-

17 “Organization”, a person other than an individual.

18 “Person”, an individual, estate, partnership, association, trust, business or nonprofit
19 entity, public corporation, government or governmental subdivision, agency, or instrumentality,
20 or other legal or commercial entity.

21 SECTION 6. Said section 2 of said chapter 109A is hereby further amended by inserting
22 after the definition of “property” the following definition:-

23 “Record”, information that is inscribed on a tangible medium or that is stored in an
24 electronic or other medium and is retrievable in perceivable form.

25 SECTION 7. Said section 2 of said chapter 109A is hereby further amended by inserting
26 after the definition of “relative” the following definition:-

27 “Sign”, with present intent to authenticate or adopt a record: (i) to execute or adopt a
28 tangible symbol; or (ii) to attach to or logically associate with the record an electronic symbol,
29 sound, or process.

30 SECTION 8. Said section 2 of said chapter 109A is hereby further amended by inserting,
31 in line 82, after the word “lease,” the following word:- license.

32 SECTION 9. Said chapter 109A is hereby amended by striking out section 3 and
33 inserting in place thereof the following section:-

34 Section 3. (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is
35 greater than the sum of the debtor's assets.

36 (b) A debtor that is generally not paying the debtor's debts as they become due other than
37 as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the
38 party against which the presumption is directed the burden of proving that the nonexistence of
39 insolvency is more probable than its existence.

40 (c) Assets under this section shall not include property that has been transferred,
41 concealed, or removed with intent to hinder, delay, or defraud creditors or that has been
42 transferred in a manner making the transfer voidable under this chapter.

43 (d) Debts under this section shall not include an obligation to the extent it is secured by a
44 valid lien on property of the debtor not included as an asset.

45 SECTION 10. Section 5 of said chapter 109A, as so appearing, is hereby amended by
46 striking out, in line 2, the word "fraudulent" and inserting in place thereof the following word:-
47 voidable.

48 SECTION 11. Said section 5 of said chapter 109A is hereby further amended by striking
49 out, in line 13, the words "he would incur, debts beyond his" and inserting in place thereof the
50 following words:- the debtor would incur, debts beyond the debtor's.

51 SECTION 12. Said section 5 of said chapter 109A is hereby further amended by striking
52 out, in line 34, the word "who" and inserting in place thereof the following word:- that.

53 SECTION 13. Said section 5 of said chapter 109A is hereby further amended by inserting
54 after subsection (b) the following subsection:-

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

57 SECTION 14. Section 6 of said chapter 109A, as so appearing, is hereby amended by
58 striking out, in lines 2 and 8, the word “fraudulent” each time it appears and inserting in place
59 thereof, in each instance, the following word:- “voidable”.

60 SECTION 15. Said section 6 of said chapter 109A is hereby further amended by inserting
61 after subsection (b) the following subsection:-

62 (c) Subject to subsection (b) of section 3, a creditor making a claim for relief under
63 subsection (a) or (b) has the burden of proving the elements of the claim for relief by a
64 preponderance of the evidence.

65 SECTION 16. Section 7 of said chapter 109A, as so appearing, is hereby amended by
66 striking out, in line 7, the word “whom” and inserting in place thereof the following word:-
67 which.

68 SECTION 17. Said section 7 of said chapter 109A is hereby further amended by
69 inserting, in line 23, after the word “transferred;” the following word:- and.

70 SECTION 18. Said section 7 of said chapter 109A is hereby further amended by striking
71 out, in line 26, the words “writing, when the writing executed and inserting in place thereof the
72 following words:- record, when the record signed.

73 SECTION 19. Section 8 of said chapter 109A, as so appearing, is hereby amended by
74 striking out paragraph (2) of subsection (a) and inserting in place thereof the following
75 paragraph:-

76 (2) an attachment or other provisional remedy against the asset transferred or other
77 property of the transferee if available under applicable law; and

78 SECTION 20. Said section 8 of said chapter 109A is hereby further amended by striking
79 out, in line 13, the comma after the word “procedure” and inserting in place thereof a colon.

80 SECTION 21. Said chapter 109A is hereby amended by striking out section 9 and
81 inserting in place thereof the following section:-

82 Section 9. (a) A transfer or obligation is not voidable under paragraph (1) of subsection
83 (a) of section 5 against a person that took in good faith and for a reasonably equivalent value
84 given the debtor or against any subsequent transferee or obligee.

85 (b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of
86 subsection (a) of section 8, the following rules apply:

87 (1) Except as otherwise provided in this section, the creditor may recover judgment for
88 the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to
89 satisfy the creditor’s claim, whichever is less. The judgment may be entered against:

90 (i) the first transferee of the asset or the person for whose benefit the transfer was made;
91 or

92 (ii) an immediate or mediate transferee of the first transferee, other than:

93 (A) a good-faith transferee that took for value; or

94 (B) an immediate or mediate good-faith transferee of a person described in clause (A).

95 (2) Recovery pursuant to paragraph (1) of subsection (a) or (b) of section 8 of or from the
96 asset transferred or its proceeds, by levy or otherwise, is available only against a person
97 described in clause (i) or (ii) of paragraph (1).

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

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

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

105 (2) enforcement of an obligation incurred; or

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

107 (e) A transfer is not voidable under paragraph (2) of subsection (a) of section 5 or section
108 6 if the transfer results from:

109 (1) termination of a lease upon default by the debtor when the termination is pursuant to
110 the lease and applicable law; or

111 (2) enforcement of a security interest in compliance with Article 9 of chapter 106, other
112 than acceptance of collateral in full or partial satisfaction of the obligation it secures.

113 (f) A transfer is not voidable under subsection (b) of section 6:

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

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

118 (3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer
119 secured present value given for that purpose as well as an antecedent debt of the debtor.

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

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

124 (2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of
125 proving each applicable element of subsection (b) or (c).

126 (3) The transferee has the burden of proving the applicability to the transferee of clause
127 (A) or (B) of clause (ii) of paragraph 1 of subsection (b).

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

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

132 SECTION 22. Section 10 of said chapter 109A, as so appearing, is hereby amended by
133 striking out, in line 1, the words “A cause of action with respect to a fraudulent” and inserting in
134 place thereof the following words:- A claim for relief with respect to a.

135 SECTION 23. Said section 10 of said chapter 109A is hereby further amended by striking
136 out, in lines 4, 6, 9 and 11, the word “within” each time it appears and inserting in place thereof,
137 in each instance, the following words:- not later than.

138 SECTION 24. Said chapter 109A is hereby amended by striking out sections 11 and 12
139 and inserting in place thereof the following sections:-

140 Section 11. (a) In this section, the following rules determine a debtor’s location:

141 (1) A debtor who is an individual is located at the individual’s principal residence.

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

144 (3) A debtor that is an organization and has more than one place of business is located at
145 its principal place of business.

146 (b) A claim for relief under this chapter is governed by the local law of the jurisdiction in
147 which the debtor is located when the transfer is made or the obligation is incurred.

148 Section 12. Unless otherwise required by the provisions of this chapter, the principles of
149 law and equity, including the law merchant and the law relating to principal and agent, estoppel,
150 laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or
151 invalidating cause, shall supplement its provisions.

152 SECTION 25. Said chapter 109A is hereby amended by inserting after section 13 the
153 following sections:-

154 Section 14. This chapter shall be applied and construed to effectuate its general purpose
155 to make uniform the law with respect to the subject of this chapter among states which enact it.

156 Section 15. This chapter modifies, limits or supersedes the Electronic Signatures in Global
157 and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or
158 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery
159 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

160 Section 16. The official comments to the Uniform Voidable Transactions Act, as added
161 by the Uniform Law Commission in 2014 with the adoption of the changes to the Uniform
162 Fraudulent Transfer Act, are not part of this act and may or may not reflect current
163 Massachusetts law.

164 SECTION 26. The amendments to chapter 109A made by this Act: (a) apply to a transfer
165 made or obligation incurred on or after the effective date of the amendments; (b) do not apply to
166 a transfer made or obligation incurred before the effective date of the amendments; and (c) do
167 not apply to a right of action that has accrued before the effective date of the amendments. A
168 transfer is made and an obligation is incurred at the time provided in section 6 of chapter 109A.