



2019 ASSEMBLY BILL 719

January 8, 2020 - Introduced by Representatives TUSLER, HEBL, ANDERSON, BROOKS, KNODL and STUBBS, cosponsored by Senators RISSER, WANGGAARD and OLSEN. Referred to Committee on Judiciary.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 242.02 (4); *to renumber* 242.08 (2) (a); *to renumber and*
2 *amend* 242.08 (2) (b); *to amend* chapter 242 (title), 242.01 (3), 242.01 (9),
3 242.01 (12), 242.02 (2), 242.02 (3), 242.04 (title), 242.04 (1) (intro.), 242.05
4 (title), 242.05 (1), 242.05 (2), 242.06 (5) (b), 242.07 (1) (b), 242.08 (title), 242.08
5 (1), 242.08 (2) (intro.), 242.08 (5) (b), 402.402 (3) (b), 411.308 (2) (b), 705.07 (2),
6 815.18 (10) and 893.425; and *to create* 242.01 (6m), 242.01 (8m), 242.01 (10m),
7 242.01 (11m), 242.04 (3), 242.05 (3), 242.08 (2) (am) 2. b. and (bm), 242.08 (7)
8 and (8), 242.094, 242.096, 242.12 and 242.13 of the statutes; **relating to:**
9 adopting modifications to, and renaming, the Uniform Fraudulent Transfer
10 Act.

Analysis by the Legislative Reference Bureau

This bill adopts the Uniform Law Commission's 2014 modifications to the Uniform Fraudulent Transfer Act, including its renaming as the Uniform Voidable Transactions Law.

Current law incorporates the Uniform Fraudulent Transfer Act (1984), adopted in this state in 1988. Under current law, a creditor may challenge certain transfers

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of property or obligations incurred by a debtor that may deprive the creditor of assets that would otherwise be available to satisfy debts if the debtor is or is about to become insolvent, such as the transfer of the debtor's assets to a family member or corporate insider. A "creditor" is any person who has a claim and a "debtor" is any person who is liable on a claim. A "claim" is a right to payment, whether it arises by contract, tort, or otherwise, and a "debt" means liability on a claim. There are four basic situations in which the creditor may challenge a transfer made or obligation incurred by the debtor (hereafter referred to as voidable transactions):

1. If the transfer is made or obligation incurred by the debtor to intentionally hinder, delay, or defraud the creditor.

2. If the debtor transfers property or incurs the obligation without receiving a reasonably equivalent value in exchange, and the debtor engages in business or a transaction for which the debtor's remaining assets are unreasonably small or the debtor intends to incur debts beyond the debtor's ability to pay as they become due.

3. If there is an existing creditor-debtor relationship, the debtor makes a transfer or incurs an obligation without receiving a reasonably equivalent value in exchange, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation. A debtor who is generally not paying debts as they become due is presumed to be insolvent.

4. If the debtor makes a transfer to an insider for a preexisting debt, the debtor was insolvent at the time of the transfer, and the insider had reasonable cause to believe that the debtor was insolvent. "Insider" is a defined term and includes certain relatives of an individual debtor and officers and directors of a corporate debtor.

Current law specifies various remedies available to a creditor if a voidable transaction has occurred. These remedies include the avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim, attachment against the asset transferred or other property of the person to whom the asset was transferred, an injunction, and appointment of a receiver.

This bill adopts the ULC's 2014 modifications to the uniform act, including the following:

1. The bill renames the provisions of the act to be the Uniform Voidable Transactions Law and replaces the term "fraudulent" with "voidable" in various provisions. The ULC specified that these changes were not intended to have substantive effect and were made to more accurately convey the effect of current law, which frequently uses the term "fraudulent" but does not actually require fraudulent activity as a condition to its application.

2. The bill creates provisions that specify, for claims and defenses related to voidable transactions, which party has the burden of proof and establishes the standard of proof as a preponderance of the evidence.

3. The bill creates a choice-of-law rule for courts to determine which state's voidable transactions law applies in a given case. Under the bill, a court must apply the law of the state where the debtor is located at the time the transfer is made or obligation incurred.

ASSEMBLY BILL 719**SECTION 6**

1 **SECTION 6.** 242.01 (10m) of the statutes is created to read:

2 242.01 **(10m)** “Record” means information that is inscribed on a tangible
3 medium or that is stored in an electronic or other medium and is retrievable in
4 perceivable form.

5 **SECTION 7.** 242.01 (11m) of the statutes is created to read:

6 242.01 **(11m)** “Sign” means, with present intent to authenticate or adopt a
7 record, any of the following:

8 (a) To execute or adopt a tangible symbol.

9 (b) To attach to or logically associate with the record an electronic symbol,
10 sound, or process.

11 **SECTION 8.** 242.01 (12) of the statutes is amended to read:

12 242.01 **(12)** “Transfer” means every mode, direct or indirect, absolute or
13 conditional, voluntary or involuntary, of disposing of or parting with an asset or an
14 interest in an asset, and includes payment of money, release, lease, license, and
15 creation of a lien or other encumbrance.

16 **SECTION 9.** 242.02 (2) of the statutes is amended to read:

17 242.02 **(2)** A debtor is insolvent if, at a fair valuation, the sum of the debtor’s
18 debts is greater than all the sum of the debtor’s assets at a fair valuation.

19 **SECTION 10.** 242.02 (3) of the statutes is amended to read:

20 242.02 **(3)** A debtor who is generally not paying the debtor’s debts as they
21 become due other than as a result of a bona fide dispute is presumed to be insolvent.
22 The presumption imposes on the party against which the presumption is directed the
23 burden of proving that the nonexistence of insolvency is more probable than its
24 existence.

25 **SECTION 11.** 242.02 (4) of the statutes is repealed.

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1 **SECTION 12.** 242.04 (title) of the statutes is amended to read:

2 **242.04** (title) ~~Transfers fraudulent~~ **Transfer or obligation voidable as**
3 **to present and or future creditors creditor.**

4 **SECTION 13.** 242.04 (1) (intro.) of the statutes is amended to read:

5 242.04 (1) (intro.) A transfer made or ~~obligations~~ obligation incurred by a
6 debtor is ~~fraudulent~~ voidable as to a creditor, whether the creditor's claim arose
7 before or after the transfer was made or the obligation was incurred, if the debtor
8 made the transfer or incurred the obligation:

9 **SECTION 14.** 242.04 (3) of the statutes is created to read:

10 242.04 (3) A creditor making a claim for relief under sub. (1) has the burden
11 of proving the elements of the claim for relief by a preponderance of the evidence.

12 **SECTION 15.** 242.05 (title) of the statutes is amended to read:

13 **242.05** (title) ~~Transfers fraudulent~~ **Transfer or obligation voidable as**
14 **to present creditors creditor.**

15 **SECTION 16.** 242.05 (1) of the statutes is amended to read:

16 242.05 (1) A transfer made or obligation incurred by a debtor is ~~fraudulent~~
17 voidable as to a creditor whose claim arose before the transfer was made or the
18 obligation was incurred if the debtor made the transfer or incurred the obligation
19 without receiving a reasonably equivalent value in exchange for the transfer or
20 obligation and the debtor was insolvent at that time or the debtor became insolvent
21 as a result of the transfer or obligation.

22 **SECTION 17.** 242.05 (2) of the statutes is amended to read:

23 242.05 (2) A transfer made by a debtor is ~~fraudulent~~ voidable as to a creditor
24 whose claim arose before the transfer was made if the transfer was made to an

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1 insider for an antecedent debt, the debtor was insolvent at that time and the insider
2 had reasonable cause to believe that the debtor was insolvent.

3 **SECTION 18.** 242.05 (3) of the statutes is created to read:

4 242.05 (3) Subject to s. 242.02 (3), a creditor making a claim for relief under
5 sub. (1) or (2) has the burden of proving the elements of the claim for relief by a
6 preponderance of the evidence.

7 **SECTION 19.** 242.06 (5) (b) of the statutes is amended to read:

8 242.06 (5) (b) If evidenced by a writing record, when the ~~writing executed~~
9 record signed by the obligor is delivered to or for the benefit of the obligee.

10 **SECTION 20.** 242.07 (1) (b) of the statutes is amended to read:

11 242.07 (1) (b) An attachment or other provisional remedy against the asset
12 transferred or other property of the transferee ~~in accordance with~~ if available under
13 chs. 810 to 813 or other applicable law.

14 **SECTION 21.** 242.08 (title) of the statutes is amended to read:

15 **242.08 (title) Defenses, liability, and protection of transferee or obligee.**

16 **SECTION 22.** 242.08 (1) of the statutes is amended to read:

17 242.08 (1) A transfer or obligation is not voidable under s. 242.04 (1) (a) against
18 a person who took in good faith and for a reasonably equivalent value given the
19 debtor or against any subsequent transferee or obligee.

20 **SECTION 23.** 242.08 (2) (intro.) of the statutes is amended to read:

21 242.08 (2) (intro.) ~~Except as otherwise provided in this section, to~~ To the extent
22 a transfer is voidable in an action by a creditor under s. 242.07 (1) (a), all of the
23 following rules apply:

24 (am) Except as otherwise provided in this section, the creditor may recover
25 judgment for the value of the asset transferred, as adjusted under sub. (3), or the

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1 amount necessary to satisfy the creditor's claim, whichever is less. The judgment
2 may be entered against any of the following:

3 **SECTION 24.** 242.08 (2) (a) of the statutes is renumbered 242.08 (2) (am) 1.

4 **SECTION 25.** 242.08 (2) (am) 2. b. and (bm) of the statutes are created to read:

5 242.08 (2) (am) 2. b. An immediate or mediate good faith transferee of a person
6 described in subd. 2. a.

7 (bm) Recovery pursuant to s. 242.07 (1) (a) or (2) of or from the asset transferred
8 or its proceeds, by levy or otherwise, is available only against a person described in
9 par. (am) 1. or 2.

10 **SECTION 26.** 242.08 (2) (b) of the statutes is renumbered 242.08 (2) (am) 2. and
11 amended to read:

12 242.08 (2) (am) 2. ~~Any subsequent~~ An immediate or mediate transferee of the
13 first transferee, other than a any of the following:

14 a. A good faith transferee who took for value or from any subsequent transferee.

15 **SECTION 27.** 242.08 (5) (b) of the statutes is amended to read:

16 242.08 (5) (b) Enforcement of a security interest in compliance with ch. 409,
17 other than acceptance of collateral in full or partial satisfaction of the obligation it
18 secures.

19 **SECTION 28.** 242.08 (7) and (8) of the statutes are created to read:

20 242.08 (7) The following rules determine the burden of proving matters
21 referred to in this section:

22 (a) A party that seeks to invoke sub. (1), (4), (5), or (6) has the burden of proving
23 the applicability of that subsection.

24 (b) Except as otherwise provided in pars. (c) and (d), the creditor has the burden
25 of proving each applicable element of sub. (2) or (3).

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1 (c) The transferee has the burden of proving the applicability to the transferee
2 of sub. (2) (am) 2. a. or b.

3 (d) A party that seeks adjustment under sub. (3) has the burden of proving the
4 adjustment.

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

7 **SECTION 29.** 242.094 of the statutes is created to read:

8 **242.094 Governing law. (1)** In this section, the following rules determine a
9 debtor's location:

10 (a) A debtor who is an individual is located at the individual's principal
11 residence.

12 (b) A debtor that is an organization and has only one place of business is located
13 at its place of business.

14 (c) A debtor that is an organization and that has more than one place of
15 business is located at its chief executive office.

16 (2) A claim for relief in the nature of a claim for relief under this chapter is
17 governed by the local law of the jurisdiction in which the debtor is located when the
18 transfer is made or the obligation is incurred.

19 **SECTION 30.** 242.096 of the statutes is created to read:

20 **242.096 Application to series organization. (1)** In this section:

21 (a) "Protected series" means an arrangement, however denominated, created
22 by a series organization that, pursuant to the law under which the series
23 organization is organized, has the characteristics set forth in par. (b).

24 (b) "Series organization" means an organization that, pursuant to the law
25 under which it is organized, has the following characteristics:

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1 1. The organic record of the organization provides for creation by the
2 organization of one or more protected series, however denominated, with respect to
3 specified property of the organization, and for records to be maintained for each
4 protected series that identify the property of or associated with the protected series.

5 2. Debt incurred or existing with respect to the activities of, or property of or
6 associated with, a particular protected series is enforceable against the property of
7 or associated with the protected series only, and not against the property of or
8 associated with the organization or other protected series of the organization.

9 3. Debt incurred or existing with respect to the activities or property of the
10 organization is enforceable against the property of the organization only, and not
11 against the property of or associated with a protected series of the organization.

12 **(2)** A series organization and each protected series of the organization is a
13 separate person for purposes of this chapter, even if for other purposes a protected
14 series is not a person separate from the organization or other protected series of the
15 organization.

16 **SECTION 31.** 242.12 of the statutes is created to read:

17 **242.12 Relation to electronic signatures in global and national**
18 **commerce act.** This chapter modifies, limits, or supersedes the federal Electronic
19 Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not
20 modify, limit, or supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize
21 electronic delivery of any of the notices described in section 103 (b) of that act, 15 USC
22 7003 (b).

23 **SECTION 32.** 242.13 of the statutes is created to read:

24 **242.13 Short title.** This chapter may be cited as the Uniform Voidable
25 Transactions Law.

ASSEMBLY BILL 719**SECTION 33**

1 **SECTION 33.** 402.402 (3) (b) of the statutes is amended to read:

2 402.402 (3) (b) Where identification to the contract or delivery is made not in
3 current course of trade but in satisfaction of or as security for a preexisting claim for
4 money, security or the like and is made under circumstances which under any rule
5 of law of the state where the goods are situated would apart from this chapter
6 constitute the transaction a fraudulent or voidable transfer or voidable preference.

7 **SECTION 34.** 411.308 (2) (b) of the statutes is amended to read:

8 411.308 (2) (b) The lease contract is made under circumstances that under any
9 statute or rule of law apart from this chapter would constitute the transaction a
10 fraudulent or voidable transfer or voidable preference.

11 **SECTION 35.** 705.07 (2) of the statutes is amended to read:

12 705.07 (2) For purposes of ch. 242, a debtor party shall be deemed to have made
13 a transfer only at the time some other party withdraws all or part of the sums on
14 deposit, or at the time of the debtor party's death as to sums not previously
15 withdrawn. In the case of a withdrawal while the debtor party is living, the sole
16 grounds for determining any such transfer to be ~~fraudulent~~ voidable shall be
17 whether the debtor party is or will be thereby rendered insolvent under s. 242.05 (1)
18 or whether the debtor party is engaged or is about to engage in a business or
19 transaction for which the assets remaining in the debtor party's hands after the
20 transfer are unreasonably small under s. 242.04 (1) (b) 1. In the case of a transfer
21 by reason of the death of the debtor party, the sole ground for determining any such
22 transfer to be ~~fraudulent~~ voidable shall be whether the debtor party's estate subject
23 to administration is insolvent under s. 242.02. For purposes of this subsection, the
24 amount transferred shall be deemed to consist of those assets which the creditors of
25 the debtor party could have made subject to their claims immediately prior to the

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1 transfer, less any sums which such creditors could have made so subject to their
2 claims immediately after the transfer.

3 **SECTION 36.** 815.18 (10) of the statutes is amended to read:

4 815.18 (10) FRAUDULENT AND VOIDABLE TRANSFERS. A conveyance or transfer of
5 wholly exempt property shall not be considered a fraudulent conveyance or a
6 fraudulent or voidable transfer. Property that is not totally exempt in value under
7 this section may be subject to a ~~fraudulent~~ voidable transfer action under ch. 242 to
8 set aside that transfer to the extent that the property's value is not exempt under this
9 section. If a court is required to satisfy the claim of a creditor and if that relief is
10 demanded, the court may determine the manner of dividing fraudulently transferred
11 property or property for which the transfer is voidable into exempt and nonexempt
12 portions, or may order the sale of the whole property and an accounting of the exempt
13 portion. Any or all of the exemptions granted by this section may be denied if, in the
14 discretion of the court having jurisdiction, the debtor procured, concealed or
15 transferred assets with the intention of defrauding creditors.

16 **SECTION 37.** 893.425 of the statutes is amended to read:

17 **893.425 Fraudulent Voidable transfers and obligations.** An action with
18 respect to a ~~fraudulent~~ transfer or obligation under ch. 242 shall be barred unless the
19 action is commenced:

20 (1) Under s. 242.04 (1) (a), ~~within~~ not later than 4 years after the transfer is
21 made or the obligation is incurred or, if later, ~~within~~ not later than one year after the
22 transfer or obligation is or could reasonably have been discovered by the claimant.

23 (2) Under s. 242.04 (1) (b) or 242.05 (1), ~~within~~ not later than 4 years after the
24 transfer is made or the obligation is incurred.

