

BUSINESS AND COMMERCE CODE

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 24. UNIFORM FRAUDULENT TRANSFER ACT

Sec. 24.001. SHORT TITLE. This chapter may be cited as the Uniform Fraudulent Transfer Act.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.002. DEFINITIONS. In this chapter:

(1) "Affiliate" means:

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant, under the law of another jurisdiction.

(3) "Claim" means a right to payment or property, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person, including a spouse, minor, person entitled to receive court or administratively ordered child support for the benefit of a child, or ward, who has a claim.

(5) "Debt" means a liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(A) if the debtor is an individual:

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

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

(iii) a general partner in a partnership described in Subparagraph (ii) of this paragraph; or

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

(B) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

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

(v) a general partner in a partnership described in Subparagraph (iv) of this paragraph; or

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

- (C) if the debtor is a partnership:
 - (i) a general partner in the debtor;
 - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
 - (iii) another partnership in which the debtor is a general partner;
 - (iv) a general partner in a partnership described in Subparagraph (iii) of this paragraph; or
 - (v) a person in control of the debtor;
- (D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (E) a managing agent of the debtor.

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

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

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

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The term does not include a transfer under a disclaimer filed under Chapter 240, Property Code.

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

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 911, Sec. 95, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. [2428](#)), Sec. 1, eff. September 1, 2015.

Sec. 24.003. INSOLVENCY. (a) 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.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 9, Sec. 11, eff. September 1, 2013.

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

(e) Debts under this section 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.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. [847](#)), Sec. 11, eff. September 1, 2013.

Sec. 24.004. VALUE. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of Sections [24.005](#)(a)(2) and [24.006](#) of this code, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of

a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

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

(d) "Reasonably equivalent value" includes without limitation, a transfer or obligation that is within the range of values for which the transferor would have sold the assets in an arm's length transaction.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 9, eff. Sept. 1, 1993.

Sec. 24.005. TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE CREDITORS. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time 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 they became due.

(b) In determining actual intent under Subsection (a)(1) of this section, 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 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 who transferred the assets to an insider of the debtor.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 10, eff. Sept. 1, 1993.

Sec. 24.006. TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS.

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

(b) A transfer made by a debtor is fraudulent 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.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.007. WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED. For the 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 otherwise than under this chapter that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in Subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in Subdivision (1) of this section, 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; and

(5) an obligation is incurred:

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

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

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.008. REMEDIES OF CREDITORS. (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section [24.009](#) of this code, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code relating to ancillary proceedings; or

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(C) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.009. DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREE. (a) A transfer or obligation is not voidable under Section 24.005(a)(1) of this code against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 24.008(a)(1) of this code, the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

(2) any subsequent transferee other than a good faith

transferee who took for value or from any subsequent transferee.

(c)(1) Except as provided by Subdivision (2) of this subsection, if the judgment under Subsection (b) of this section 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.

(2) The value of the asset transferred is not to be adjusted to include the value of improvements made by a good faith transferee, including:

(A) physical additions or changes to the asset transferred;

(B) repairs to the asset;

(C) payment of any tax on the asset;

(D) payment of any debt secured by a lien on the asset that is superior or equal to the rights of a voiding creditor under this chapter; and

(E) preservation of the asset.

(d)(1) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, at the transferee's or obligee's election, to the extent of the value given the debtor for the transfer or obligation, to:

(A) a lien, prior to the rights of a voiding creditor under this chapter, or a right to retain any interest in the asset transferred;

(B) enforcement of any obligation incurred; or

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

(2) Notwithstanding voidability of a transfer under this chapter, to the extent of the value of any improvements made by a good faith transferee, the good faith transferee is entitled to a lien on the asset transferred prior to the rights of a voiding creditor under this chapter

(e) A transfer is not voidable under Section 24.005(a)(2) or Section 24.006 of this code if the transfer results from:

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

or

(2) enforcement of a security interest in compliance with Chapter 9 of this code.

(f) A transfer is not voidable under Section 24.006(b) of this code:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless 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 pursuant to 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.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 11, eff. Sept. 1, 1993.

Sec. 24.010. EXTINGUISHMENT OF CAUSE OF ACTION. (a) Except as provided by Subsection (b) of this section, a cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Section 24.005(a)(1) of this code, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Section 24.005(a)(2) or 24.006(a) of this code, within four years after the transfer was made or the obligation was incurred; or

(3) under Section 24.006(b) of this code, within one year after the transfer was made.

(b) A cause of action on behalf of a spouse, minor, or ward with respect to a fraudulent transfer or obligation under this chapter is extinguished unless the action is brought:

(1) under Section 24.005(a) or 24.006(a) of this code, within two years after the cause of action accrues, or if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or

(2) under Section 24.006(b) of this code within one year after the date the transfer was made.

(c) If a creditor entitled to bring an action under this chapter is under a legal disability when a time period prescribed by this section starts, the time of the disability is not included in the period. A disability that arises after the period starts does not suspend the running of the period. A creditor may not tack one legal disability to another to extend the period. For the purposes of this subsection, a creditor is under a legal disability if the creditor is:

(1) younger than 18 years of age, regardless of whether the person is married; or

(2) of unsound mind.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 12, eff. Sept. 1, 1993.

Sec. 24.011. SUPPLEMENTARY PROVISIONS. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.013. COSTS. In any proceeding under this chapter, the court may award costs and reasonable attorney's fees as are equitable and just.

Added by Acts 2003, 78th Leg., ch. 420, Sec. 1, eff. Sept. 1, 2003.