SENATE FILE NO. SF0039

Uniform Fraudulent Transfers Act.

Sponsored by: Senator(s) Case and Representative(s) Buchanan

A BILL

for

AN ACT relating to fraudulent transfers; enacting the Uniform Fraudulent Transfers Act as specified; repealing the Uniform Fraudulent Conveyance Act; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 34-14-201 through 34-14-212 are created to read.

CHAPTER 14

FRAUDULENT TRANSFERS

34-14-201. Short title.

This act may be cited as the "Uniform Fraudulent Transfer Act."

34-14-202. Definitions.

(a) As used in this act:

(i) "Affiliate" means:

(A) A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) 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 twenty percent (20%) 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 the power to vote, twenty percent (20%) 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.

(ii) "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 entireties to the extent it is not subject to process by a creditor holding a claim against only one (1) tenant.

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

(iv) "Creditor" means a person who has a claim;

(v) "Debt" means liability on a claim;

(vi) "Debtor" means a person who is liable on a claim;

(vii) "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 subdivision (A)(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 subdivision (A)(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 or 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 subdivision (C)(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.

(viii) "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;

(ix) "Property" means anything that may be the subject of ownership;

(x) "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;

(xi) "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;

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

34-14-203. Insolvency.

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

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

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

(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 act.

(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.

34-14-204. 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 W.S. 34-14-205(a)(ii) and 34-14-206, 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.

34-14-205. 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 after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(i) With actual intent to hinder, delay or defraud any creditor of the debtor; or

(ii) 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 he would incur, debts beyond his ability to pay as they became due.

(b) In determining actual intent under paragraph (a)(i) of this section, consideration may be given, among other factors, to whether:

(i) The transfer or obligation was to an insider;

(ii) The debtor retained possession or control of the property transferred after the transfer;

(iii) The transfer or obligation was disclosed or concealed;

(iv) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(v) The transfer was of substantially all the debtor's assets;

(vi) The debtor absconded;

(vii) The debtor removed or concealed assets;

(viii) 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;

(ix) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(x) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(xi) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

34-14-206. 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.

34-14-207. When transfer is made or obligation is incurred.

(a) For purposes of this act:

(i) 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 act that is superior to the interest of the transferee.

(b) If applicable law permits the transfer to be perfected as provided in subsection (a) of this section and the transfer is not so perfected before the commencement of an action for relief under this act, the transfer is deemed made immediately before the commencement of the action.

(c) If applicable law does not permit the transfer to be perfected as provided in subsection (a) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

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

(e) An obligation is incurred:

(i) If oral, when it becomes effective between the parties; or

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

34-14-208. Remedies of creditors.

(a) In an action for relief against a transfer or obligation under this act, a creditor, subject to the limitations in W.S. 34-14-209, may obtain:

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

(ii) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by law;

(iii) 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 the 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.

34-14-209. Defenses, liability and protection of transferee.

(a) A transfer or obligation is not voidable under W.S. 34-14-205(a)(i) 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 W.S. 34-14-208(a)(i), 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:

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

(ii) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) 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.

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

(i) A lien on or a right to retain any interest in the asset transferred;

(ii) Enforcement of any obligation incurred; or

(iii) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under W.S. 34-14-205(a)(ii) or 34-14-206 if the transfer results from:

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

(ii) Enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code.

(f) A transfer is not voidable under W.S. 34-14-206(b):

(i) To the extent the insider gave a 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;

(ii) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(iii) 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.

34-14-210. Extinguishment of claim for relief.

(a) A claim for relief with respect to a fraudulent transfer or obligation under this act is extinguished unless action is brought:

(i) Under W.S. 34-14-205(a)(ii) or 34-14-206(a), within four (4) years after the transfer was made or the obligation was incurred or, if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(ii) Under W.S. 31-14-205(a)(ii) or 34-14-206(a), within four (4) years after the transfer was made or the obligation was incurred; or

(iii) Under W.S. 34-14-206(b), within one (1) year after the transfer was made or the obligation was incurred.

34-14-211. Supplementary provisions.

Unless displaced by the provisions of this act, 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.

34-14-212. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 2. W.S. 34-14-101 through 34-14-113 are repealed.

Section 3. This act is effective July 1, 2006

(END)