

No. 143, S.]

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CHAPTER 470.

AN ACT to repeal sections 2320, 2323 and 2324; to amend section 2326 of the statutes and to create sections 2320—1 to 2320—12, inclusive, of the statutes in a new chapter to be numbered 105m, relating to fraudulent conveyances and to make uniform the law relating thereto.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Sections 2320, 2323 and 2324 of the statutes are repealed.

SECTION 2. Twelve new sections are added to the statutes in a new chapter to be numbered 105m to read: Section 2320—

1. 1. In this chapter "assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

2. "Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

3. "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute fixed or contingent.

4. "Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

Section 2320—2. 1. A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

2. In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription.

Section 2320—3. Fair consideration is given for property, or obligation.

(a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

Section 2320—4. Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

Section 2320—5. Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

Section 2320—6. Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

Section 2320—7. Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors.

Section 2320—8. 1. Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred,

(a) To a partner, whether with or without a promise by him to pay partnership debts, or

(b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

Section 2320—9. 1. Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser.

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed.

2. A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment.

Section 2320—10. Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may

(a) Restrain the defendant from disposing of his property,

(b) Appoint a receiver to take charge of the property,

(c) Set aside the conveyance or annul the obligation, or

(d) Make any order which the circumstances of the case may require.

Section 2320—11. In any case not provided for in this chapter the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern.

Section 2320—12. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 3. This chapter may be cited as the Uniform Fraudulent Conveyance Act.

SECTION 4. Section 2326 of the statutes is amended to read: Section 2326. The term "conveyance", as used in * * * chapters 104, 105 and 106 of the statutes, shall be construed to embrace every instrument in writing except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

SECTION 5. This act shall take effect upon passage and publication.

Approved July 1, 1919.