



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Testimony
on
Assembly Bill 719
Assembly Committee on Judiciary
January 16, 2020

Mr. Chairman and members of the committee, thank you for hearing Assembly Bill 719, which amends and renames the Uniform Fraudulent Transfer Act as the Uniform Voidable Transactions Act (UVTA), promulgated by the Uniform Law Commission in 2014. So far, twenty-two states have enacted the UVTA Amendments including our regional sister-states of Iowa, Indiana, Michigan, and Minnesota.¹

In 1988 Wisconsin Adopted the Uniform Fraudulent Transfer Act.² This act, current law, provides a process for creditors to challenge asset transfers or obligations incurred by a debtor that would deprive the creditor of assets that would otherwise be used to satisfy a debt. Current law describes four circumstances when an asset transfer could be challenged by the creditor as fraudulent (voidable).³ Current law also lays out remedies for creditors when one of the aforementioned transactions occurs.⁴

This bill adopts the 2014 Uniform Law Commission amendments to the Uniform Fraudulent Transfers Act and includes the following changes:

- Replaces the term “fraudulent” with “voidable” to more-accurately reflect the meaning and operation of the law;
- Clarifies that a claim under the UVTA must be made where the debtor is located when a voidable transfer occurs (Section 29);
- Better defines when a debtor is considered insolvent (Section 10);
- Includes provisions regarding electronic signatures (Sections 7, 31) and the treatment of “protected series organizations,” a new type of business entity (Section 30); and
- Clearly establishes the “preponderance of the evidence” standard and identifies which party bears the burden of proof for varying provisions (Section 28).

The UVTA is suggested legislation by the Council of State Governments and approved by the American Bar Association.

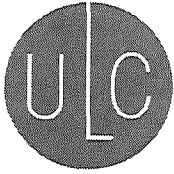
On behalf of the Wisconsin Commissioners of the Uniform Law Commission, the many states that have enacted the UFTA and UVTA, and those who find themselves utilizing the provisions of the UFTA and UVTA, we respectfully urge your support. Thank you for your time and consideration.

¹ As of January 15, 2020.

² 1987 Wisconsin Act 192.

³ See Wis. Stat. §§ 242.04 and 242.05.

⁴ See Wis. Stat. § 242.07.



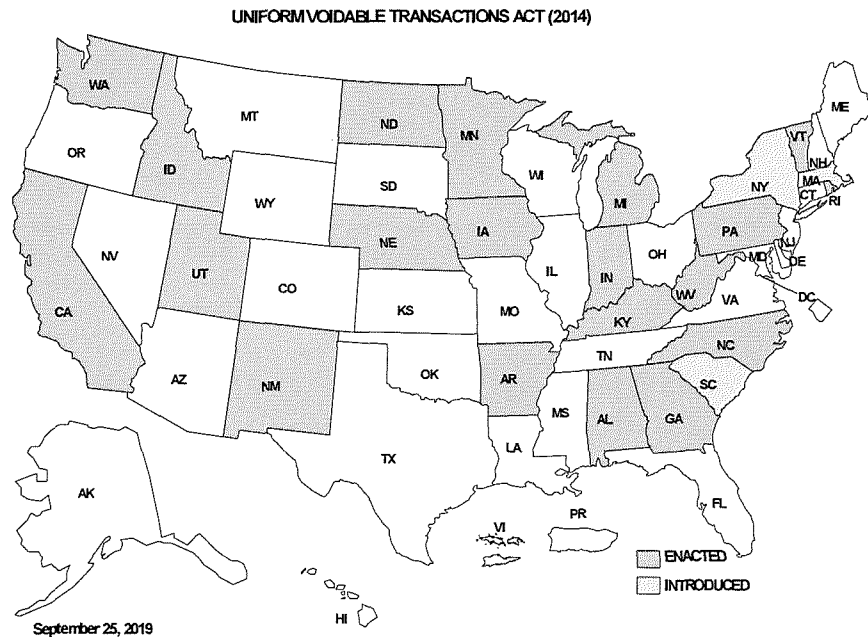
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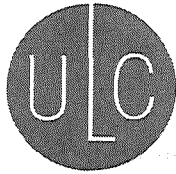
A Few Facts about THE UNIFORM VOIDABLE TRANSACTIONS ACT (2014 AMENDMENTS)

- PURPOSE:** The Uniform Voidable Transactions Act (UVTA), formerly named the Uniform Fraudulent Transfer Act (UFTA), strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor's creditors. The 2014 amendments to the UVTA address a small number of narrowly defined issues and are not a comprehensive revision of the Act.
- ORIGIN:** Completed by the Uniform Law Commission in 2014.
- APPROVED BY:** American Bar Association; included as 2015 Suggested State Legislation by the Council of State Governments
- ENACTED BY:** Alabama, Arkansas, California, Georgia, Idaho, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, Rhode Island, Utah, Vermont, Washington, West Virginia



For further information about the UVTA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.



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THE UNIFORM VOIDABLE TRANSACTIONS ACT (2014 AMENDMENTS) (FORMERLY THE UNIFORM FRAUDULENT TRANSFER ACT)

– A Summary –

The Uniform Law Commission promulgated the Uniform Fraudulent Transfer Act in 1984. Forty-five states, the District of Columbia, and the U.S. Virgin Islands have enacted the Act as of 2015. The Act replaced a very similar uniform act created in 1918, which remains in force in two states as of 2015.

The Uniform Act: Nature of Amendments

In 2014, the Uniform Law Commission amended the Uniform Fraudulent Transfer Act for the first time since its creation in 1984. These changes address a few narrowly defined issues, and are not a comprehensive revision.

First, the title of the Act is now the “Uniform Voidable Transactions Act” (UVTA). The original title was a misleading description because fraud has never been a necessary element of a claim under the Act and the Act has always applied to the incurrence of obligations as well as to transfers of property. Thus, the name change aims to clarify the purpose and application of the Act.

The UVTA amendments also include a few new provisions. For example, the UVTA adds a choice-of-law rule for claims governed by the Act. The UVTA also includes uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act. The 2014 update also responds to the emergence of the “series organization” as a significant form of business organization. To deal with these series organizations, the UVTA adds a new section which provides that each “protected series” of a series organization is to be treated as a person for purposes of the Act, even if it is not treated as a person for other purposes.

The 2014 amendments to the UVTA also delete the special definition of “insolvency” for partnerships. The Act as originally written set forth a special definition of “insolvency” applicable to partnerships, which adds to the sum of the partnership’s assets the net worth of each of its general partners. The amendments delete that special definition, and thus, make a partnership subject to the general definition. Under the general definition of “insolvency” in the Act, the debtor is insolvent if, at a fair valuation, the sum of the debtor’s debts is greater than the sum of the debtor’s assets.

The amendments to the UVTA refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee. For instance, as originally written, Section 8(a) of the Act creates a complete defense to an action under Section 4(a)(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value.

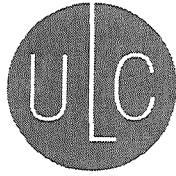
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The amendments add to Section 8(a) the further requirement that the reasonably equivalent value must be given the debtor. In addition, Section 8(b), derived from Bankruptcy Code §§ 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such a person.

The amendments clarify the meaning of Section 8(b) by rewording it to follow more closely the wording of Bankruptcy Code §§ 550(a), (b) (which is substantially unchanged as of 2014). Finally, Section 8(e)(2) as originally written created a defense to an action under Section 4(a)(2) or Section 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as “strict foreclosure”).

The Uniform Law Commission urges all states to adopt the 2014 amendments to the UVTA as quickly as possible to implement choice-of-law rules, create certainty, and eliminate wasteful litigation with respect to transactions that touch more than one jurisdiction.

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**WHY YOUR STATE SHOULD ADOPT THE
UNIFORM VOIDABLE TRANSACTIONS ACT (2014 AMENDMENTS)**
(FORMERLY THE UNIFORM FRAUDULENT TRANSFER ACT)

The Uniform Voidable Transactions Act (UVTA) is a 2014 update to the Uniform Fraudulent Transfer Act. The UVTA strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor's creditors. For example, the UVTA provides a remedy to a creditor whose debtor transfers property to a relative or third party to keep the property out of the creditor's reach. The UVTA includes a number of amendments to the existing Uniform Fraudulent Transfer Act:

- ***The UVTA clarifies confusing terminology.*** The change of the Act's title to the Uniform Voidable Transactions Act does not change the meaning of the Act. Rather, the new title is a more accurate description of what the Act already says, and will reduce misunderstanding by courts, lawyers, and others affected by the law.
- ***The UVTA adds a clear choice-of-law provision that offers predictability and reduces costs.*** Courts have used various legal theories to determine which state's voidable transaction law should apply in a given case. These court decisions are unpredictable and inconsistent. The UVTA resolves these choice-of-law questions by providing a straightforward solution for transaction parties and courts to apply uniformly. Clarifying these rules will reduce transaction and litigation costs and conserve court resources.
- ***The UVTA improves provisions for determining a debtor's insolvency.*** The UVTA deletes the former requirement that the net worth of a general partner be included in determining the insolvency of a partnership, and otherwise refines the rules for determining a debtor's insolvency.
- ***The UVTA addresses emerging legal developments.*** For example, the UVTA adds new provisions addressing electronic communications and the treatment of "series organizations," a new and increasingly utilized type of business entity.
- ***The UVTA provides guidance to courts and litigants regarding key evidentiary matters.*** The UVTA establishes the burden of proof for each party in a UVTA lawsuit. The Act clarifies the "preponderance of the evidence" standard applies throughout the Act, meaning that the party required to prove a fact must establish that the fact is more likely to be true than not true.

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