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UNIFORM FRAUDULENT TRANSFER ACT

House Bill 5708
Sponsor: Rep. Andrew Richner
Committee: Commerce

Complete to 3-20-98

A SUMMARY OF HOUSE BILL 5708 AS INTRODUCED 3-19-98

House Bill 5708 would create a new act to be known as the "Uniform Fraudulent Transfer Act," and would repeal the "Uniform Fraudulent Conveyance Act," Public Act 310 of 1919.

(According to the Michigan Law Revision Commission, since 1984 the Uniform Fraudulent Transfer Act has been proposed to replace the Uniform Fraudulent Conveyance Act, although the new act would not change the basic structure of the current act. It would, however, delete certain provisions and correct deficiencies, including narrowing an over-broad definition of asset (used in determining "insolvency"); clarifying the partnership provision,; establishing a timing provision; and discarding an unnecessary distinction between creditors with matured claims and those with unmatured claims. In addition, the new act would take into account changes made in related statutes and legal standards, including changes concerning fraudulent transfers made by the Bankruptcy Reform Act of 1978; changes in the law concerning security transfers under the Uniform Commercial Code; new provisions in the Model Corporations Act concerning the distribution of dividends; and new provisions in the Model Rules of Professional Conduct, which forbid a lawyer to knowingly assist a client in committing a fraud.)

A brief description of each section of House Bill 5708 follows.

• Section 1 would define terms, including among others, affiliate, asset, claim, creditor, and transfer.

• Section 2 would establish the basic definition of insolvency.

• Section 3 defines those transactions that would be deemed "for value." This definition would replace "fair consideration" from the Uniform Fraudulent Conveyances Act, and is more limited in scope.

• Section 4 would describe fraudulent transfers to present and future creditors, and provides for the remedies a creditor could seek.

• Section 5 would establish that constructive fraud would arise from a transfer of property or an assumption of an obligation without receiving reasonably equivalent value if the debtor was insolvent, or the transfer rendered the debtor insolvent.

• Section 6 would define the time of a transfer. This time constitutes the point at which the solvency or insolvency of the debtor would be measured, and from which the statute of limitations would run. (The current act does not specify when a transfer is completed.)

• Section 7 sets forth the remedies for a fraudulent transfer that would be generally available to creditors, and clarifies matured and unmatured claims. (A claim is 'matured' if there is a judgment against the debtor on the creditor's claim.)

• Section 8 would limit the application of the creditor's remedies. The section is said to be intended to protect the interests of good-faith transferees when a transfer is deemed fraudulent.

• Section 9 would set a statute of limitations.

• Section 10 would clarify that a limitation-of-action provision would not negate the possible application of, for example, the rule of laches in Michigan. (The doctrine of laches is the failure to assert rights, coupled with a lapse of time, resulting in a disadvantage.)

• Section 11 would establish the uniformity of the act.

• Section 12 specifies that the act would be known as the Uniform Fraudulent Transfer Act.

• Section 13 would repeal the Uniform Fraudulent Conveyance Act, Public Act 310 of 1919 (MCL 566.11 to 566.23).

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