

HOUSE BILL No. 5417

February 22, 2000, Introduced by Reps. Law, Richner, Shulman, Sanborn, Kukuk, LaSata, Baird, Minore, Schermesser, Koetje, Voorhees, Hart, Switalski and Faunce and referred to the Committee on Family and Civil Law.

A bill to amend 1998 PA 434, entitled
"Uniform fraudulent transfer act,"
by amending section 8 (MCL 566.38).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) A transfer or obligation is not voidable under
2 section 4(1)(a) against a person who took in good faith and for a
3 reasonably equivalent value or against any subsequent transferee
4 or obligee.
5 (2) Except as otherwise provided in this section, to the
6 extent a transfer is voidable in an action by a creditor under
7 section 7(1)(a), the creditor may recover a judgment for the
8 value of the asset transferred, as adjusted under subsection (3),
9 or the amount necessary to satisfy the creditor's claim,
10 whichever is less. The judgment may be entered against either of
11 the following:

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1 (a) The first transferee of the asset or the person for
2 whose benefit the transfer was made.

3 (b) Any subsequent transferee other than a good-faith trans-
4 feree who took for value or from any subsequent transferee.

5 (3) If the judgment under subsection (2) is based upon the
6 value of the asset transferred, the judgment shall be for an
7 amount equal to the value of the asset at the time of the trans-
8 fer, subject to adjustment as the equities may require.

9 (4) Notwithstanding the voidability of a transfer or an
10 obligation under this act, a good-faith transferee or obligee is
11 entitled, to the extent of the value given the debtor for the
12 transfer or obligation, to 1 or more of the following:

13 (a) A lien on or a right to retain any interest in the asset
14 transferred.

15 (b) Enforcement of any obligation incurred.

16 (c) A reduction in the amount of the liability on the
17 judgment.

18 (5) A transfer is not voidable under section 4(1)(b) or 5 if
19 the transfer results from either of the following:

20 (a) Termination of a lease upon default by the debtor when
21 the termination is pursuant to the lease and applicable law.

22 (b) Enforcement of a security interest in compliance with
23 article 9 of the uniform commercial code, 1962 PA 174, MCL
24 440.9101 to ~~440.9507~~ 440.9708.

25 (6) A transfer is not voidable under section 5(2) if 1 or
26 more of the following occur:

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1 (a) To the extent the insider gave new value to or for the
2 benefit of the debtor after the transfer was made unless the new
3 value was secured by a valid lien.

4 (b) If made in the ordinary course of business or financial
5 affairs of the debtor and the insider.

6 (c) If made pursuant to a good-faith effort to rehabilitate
7 the debtor and the transfer secured present value given for that
8 purpose as well as an antecedent debt of the debtor.

[Enacting section 1. This amendatory act takes effect July 1,
2001.]

9 Enacting section [2]. This amendatory act does not take
10 effect unless House Bill No. 5228 of the 90th Legislature is
11 enacted into law.