Legislative Analysis

UNIFORM VOIDABLE TRANSACTIONS ACT

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Senate Bill 982 (passed by the Senate as S-1)
Senate Bills 983-985 as passed by the Senate
Sponsor: Sen. Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 12-5-16

BRIEF SUMMARY:

Senate Bill 982 renames the Uniform Fraudulent Transfer Act as the Uniform Voidable Transactions Act (UVTA). According to the Uniform Law Commission, the UVTA, like the current act, "provides a creditor with the means to reach assets a debtor has transferred to another person to keep them from being used to satisfy a debt." In 2014, the Uniform Law Commission updated its model act to "provide remedies to a creditor whose debtor transfers property to a relative or third party to keep the property out of the creditor's reach." Senate Bill 982 incorporates the model act amendments to, among other things, do the following:

- Rename the act as the Uniform Voidable Transactions Act (UVTA) and change numerous references from "*fraudulent*" to "*voidable*". [This provides a more accurate description of what the act does and shifts the focus away from whether a transfer made or obligation incurred is *fraudulent* as to a creditor or whether that transfer or obligation is "*voidable.*"]

- No longer include the net worth of each general partner when determining if a partnership is insolvent.

- Add, to current language that a debtor that is generally not paying the debtor's debt as they become due is presumed to be insolvent, that *the presumption imposes on the party against which the presumption is directed the burden of providing that the nonexistence of insolvency is more probable than its existence*. This would not apply in situations in which the debt is not being paid as a result of a bona fide dispute.

- Require, for each party bearing the burden to prove a fact in a lawsuit, to use the "preponderance of the evidence" standard of proof. [This standard places the weight on the probable accuracy and/or whether a fact is more true than not true, not on how much evidence is presented.]

- Establishes a clear "choice of law" provision that specifies that a claim for relief under the act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. Under the bill, the following rules will determine a debtor's location:

- The principal residence—for a debtor who is an individual.
- The place of business—for a debtor who is an organization having only one place of business.
- The chief executive office—for a debtor who is an organization having more than one place of business.

- No longer give an exemption to strict foreclosures of security interests under Article 9 of the Uniform Commercial Code by stating that a transfer is not voidable under Section 4(1) of the act if the transfer results from enforcement of a security interest in compliance with the UCC other than an acceptance of collateral in full or partial satisfaction of the obligation it secures.

- Applies the UVTA to "series organizations," defines the term, and specifies that a series organization and each protected series of the organization is a separate person for purposes of the act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. [In a series organization, an entity, such as an LLC, creates one or more series that acts like a separate entity and thus can own assets separately from the LLC or be protected against liabilities incurred by the organization or its other series organizations. Extending applicability of the UVTA to series organizations and protected series ensures that transfers between series, or the organization and a series, can be set aside or avoided.

- Modifies, limits, or supersedes the electronic signatures in the Global and National Commerce Act, but does modify, limit, or supersede 15 USC 7001(d) or authorize electronic delivery of any of the notices described in 15 USC 7003(B) of that act.

Sections amended or added by the bill apply to a transfer made or obligation incurred on or *after* the bill's effective date, and do not apply to a transfer made or an obligation incurred *before* that date. In addition, sections added or amended do not apply to a right of action that accrued *before* the bill's effective date. For purposes of this provision, a transfer is made and an obligation incurred at the time provided in Section 6 of the act.

Senate Bill 982 is tie-barred to Senate Bills 983-985.

<u>Senate Bills 983-985</u> are companion bills that amend various acts to refer to the Uniform Voidable Transactions Act instead of the Uniform Fraudulent Transfer Act.

<u>Senate Bill 983</u> amends the Business Corporation Act (MCL 450.1122).
<u>Senate Bill 984</u> amends the Nonprofit Corporation Act (MCL 450.2122).
<u>Senate Bill 985</u> amends the Support and Parenting Time Enforcement Act (MCL 552.624a). Each of the bills is tie-barred to Senate Bill 982.

Each of the four bills will take effect 90 days after enactment.

BACKGROUND INFORMATION:

Some of the information used in this summary was obtained from information provided by the Uniform Law Commission on its website at: http://www.uniformlaws.org/Act.aspx?title=Fraudulent%20Transfer%20Act%20-%20now%20known%20as%20Voidable%20Transactions%20Act,

The summary also used information from the American Bar Association's document entitled, *The Uniform Voidable Transactions Act: An Overview of Refinements to the Uniform Fraudulent Transfer Act* and available at: http://www.americanbar.org/publications/probate_property_magazine_2012/2015/july_august_2015/2015_aba_rpte_pp_v29_3_article_foster_boughman_uniform_voidable_transactions_act.html.

For more information on Senate Bills 982-985, see the analysis prepared by the Senate Fiscal Agency on the bills as passed by the Senate, dated 10-11-16.

FISCAL IMPACT:

SB 982 would not have a fiscal impact on state or local units of government.

SB 983 and 984: The bills would not have fiscal impacts on units of state or local government, since they merely update references within existing bills.

SB 985 would have no fiscal implications for state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.