

Act No. 552  
Public Acts of 2016  
Approved by the Governor  
January 6, 2017  
Filed with the Secretary of State  
January 10, 2017  
EFFECTIVE DATE: April 10, 2017

**STATE OF MICHIGAN  
98TH LEGISLATURE  
REGULAR SESSION OF 2016**

Introduced by Senator Schuitmaker

# **ENROLLED SENATE BILL No. 982**

AN ACT to amend 1998 PA 434, entitled “An act to define and regulate fraudulent transfers and conveyances; to set aside and modify certain transfers and conveyances; to make uniform the law of fraudulent transfers; and to repeal acts and parts of acts,” by amending the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 (MCL 566.31, 566.32, 566.33, 566.34, 566.35, 566.36, 566.37, 566.38, 566.39, 566.40, 566.41, 566.42, and 566.43), sections 1, 4, and 9 as amended by 2016 PA 331 and section 8 as amended by 2000 PA 362, and by adding sections 14 and 15.

*The People of the State of Michigan enact:*

## **TITLE**

An act to provide for the setting aside and modification of certain transfers, conveyances, and obligations; to make uniform the law of fraudulent transfers; and to provide remedies.

Sec. 1. As used in this act:

(a) “Affiliate” means a person that is 1 or more of the following:

(i) A person that directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities in either of the following circumstances:

(A) As a fiduciary or agent without sole discretionary power to vote the securities.

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote.

(ii) A corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities in either of the following circumstances:

(A) As a fiduciary or agent without sole discretionary power to vote the securities.

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote.

(iii) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor.

(iv) A person that operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(b) “Asset” means property of a debtor. Asset does not include any of the following:

(i) Property to the extent it is encumbered by a valid lien.

(ii) Property to the extent it is generally exempt under nonbankruptcy law.

(iii) An interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only 1 tenant.

(c) “Claim”, except as used in “claim for relief”, means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(d) “Creditor” means a person that has a claim.

(e) “Debt” means liability on a claim.

(f) “Debtor” means a person that is liable on a claim.

(g) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(h) “Insider” includes all of the following:

(i) If the debtor is an individual, all of the following:

(A) A relative of the debtor or of a general partner of the debtor.

(B) A partnership in which the debtor is a general partner.

(C) A general partner in a partnership described in sub-subparagraph (B).

(D) A corporation of which the debtor is a director, officer, or person in control.

(ii) If the debtor is a corporation, all of the following:

(A) A director of the debtor.

(B) An officer of the debtor.

(C) A person in control of the debtor.

(D) A partnership in which the debtor is a general partner.

(E) A general partner in a partnership described in sub-subparagraph (D).

(F) A relative of a general partner, director, officer, or person in control of the debtor.

(iii) If the debtor is a partnership, all of the following:

(A) A general partner in the debtor.

(B) A relative of a general partner in, a general partner of, or a person in control of the debtor.

(C) Another partnership in which the debtor is a general partner.

(D) A general partner in a partnership described in sub-subparagraph (C).

(E) A person in control of the debtor.

(iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

(v) A managing agent of the debtor.

(i) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(j) “Organization” means a person other than an individual.

(k) “Person” means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(l) “Property” means anything that may be the subject of ownership.

(m) “Qualified disposition” means that term as defined in section 2 of the qualified dispositions in trust act.

(n) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(p) “Sign” means to do any of the following with present intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

(ii) Attach to or logically associate with the record an electronic symbol, sound, or process.

(q) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset. Transfer includes payment of money, release, lease, license, and creation of a lien or other encumbrance. Transfer does not include any of the following:

(i) The lapse, release, waiver, or disclaimer of a power of appointment given to a donee by a third party. As used in this subparagraph, “donee” means that term as defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.

(ii) The disposing of or parting with an asset or interest in an asset held in trust to the person who created the trust if all of the following apply:

(A) The trust is an irrevocable trust for the benefit of third parties.

(B) The trust is a grantor trust with regard to the person for income tax purposes under sections 671 to 679 of the internal revenue code of 1986, 26 USC 671 to 679.

(C) The trustee has the discretionary authority to reimburse or advance trust property to the person for taxes concerning income attributable to the trust property.

(D) The disposing of or parting with the asset or interest in the asset is the exercise by the trustee of the discretionary authority described in sub-subparagraph (C).

(r) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Sec. 2. (1) A 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.

(2) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) As used in this section:

(a) Assets do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this act.

(b) Debts do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Sec. 3. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. Value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of section 4(1)(b) and section 5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Sec. 4. (1) Except as otherwise provided in subsection (4), a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following circumstances:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor did either of the following:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(ii) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a) or (4), consideration may be given, among other factors, to whether 1 or more of the following occurred:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all of the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(4) A qualified disposition is fraudulent as to the creditor whose claim arose after the qualified disposition only if the qualified disposition was made with actual intent to hinder, delay, or defraud any creditor of the debtor.

Sec. 5. (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to section 2(2), a creditor making a claim for relief under subsection (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Sec. 6. (1) A transfer is made under this act when 1 of the following occurs:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this act that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this act, the transfer is considered made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made under this act until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred under this act if 1 of the following occurs:

(a) If oral, when it becomes effective between the parties.

(b) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Sec. 7. (1) In an action for relief against a transfer or obligation under this act, a creditor, subject to the limitations in section 8, may obtain 1 or more of the following:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law.

(c) Subject to applicable principles of equity and in accordance with applicable court rules and statutes, 1 or more of the following:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property.

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee.

(iii) Any other relief the court determines appropriate.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Sec. 8. (1) A transfer or obligation is not voidable under section 4(1)(a) against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a creditor under section 7(1)(a), all of the following rules apply:

(a) Except as otherwise provided in this section, the creditor may recover a judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against either of the following:

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

(ii) An immediate or mediate transferee of the first transferee, other than either of the following:

(A) A good-faith transferee who took for value.

(B) An immediate or mediate good-faith transferee of a person described in sub-subparagraph (A).

(b) Recovery pursuant to section 7(1)(a) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subdivision (a)(i) or (ii).

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

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

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

(b) Enforcement of an obligation incurred.

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

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

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

(b) Enforcement of a security interest in compliance with article 9 of the uniform commercial code, other than an acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under section 5(2) in 1 or more of the following circumstances:

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

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

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

(7) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (1), (4), (5), or (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in subdivisions (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or (3).

(c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)(ii)(A) or (B).

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

(8) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Sec. 9. A claim for relief with respect to a transfer or obligation under this act is extinguished unless action is brought within 1 or more of the following time periods:

(a) Except as otherwise provided in subdivision (c), if the claim for relief is under section 4(1)(a) or (b) or 5(1), within the time provided in section 5813 or 5855 of the revised judicature act of 1961, 1961 PA 236, MCL 600.5813 and 600.5855.

(b) Except as otherwise provided in subdivision (c), if the claim for relief is under section 5(2), within 1 year after the transfer was made or the obligation was incurred.

(c) If the claim for relief is under section 4 or 5, with respect to a qualified disposition, the time provided in section 5 of the qualified dispositions in trust act.

Sec. 10. (1) In this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal residence.

(b) A debtor that is an organization and has only 1 place of business is located at its place of business.

(c) A debtor that is an organization and has more than 1 place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this 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.

Sec. 11. (1) As used in this section:

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (b).

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of 1 or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Sec. 12. Unless displaced by the provisions of this act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement the provisions of this act.

Sec. 13. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

Sec. 14. This act modifies, limits, or supersedes the electronic signatures in the global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(c) or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

Sec. 15. (1) This act, which was formerly known and cited as the “uniform fraudulent transfer act”, shall be known and may be cited as the “uniform voidable transactions act”.

(2) All of the following apply to sections 1 to 13 as amended, and to section 14 and this section as added, by the amendatory act that added this section:

(a) The sections as amended or added apply to a transfer made or obligation incurred on or after the effective date of the amendatory act that added this section.

(b) The sections as amended or added do not apply to a transfer made or obligation incurred before the effective date of the amendatory act that added this section.

(c) The sections as amended or added do not apply to a right of action that accrued before the effective date of the amendatory act that added this section.

(d) For purposes of this subsection, a transfer is made and an obligation is incurred at the time provided in section 6.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 98th Legislature are enacted into law:

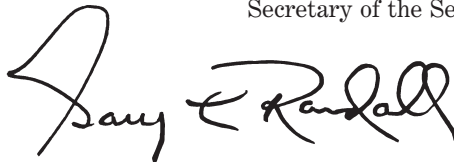
(a) Senate Bill No. 983.

(b) Senate Bill No. 984.

(c) Senate Bill No. 985.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor