

IC 32-18-2

Chapter 2. Uniform Fraudulent Transfer Act

IC 32-18-2-0.2

Application of prior law to transfers and obligations

Sec. 0.2. To the extent applicable, the following statutes (before their repeal by P.L.144-1994) apply to a transfer made or an obligation incurred before July 1, 1994:

- (1) IC 30-1-9-7.
- (2) IC 32-2-1-7.
- (3) IC 32-2-1-8.
- (4) IC 32-2-1-9.
- (5) IC 32-2-1-10.
- (6) IC 32-2-1-14.
- (7) IC 32-2-1-15.
- (8) IC 32-2-1-16.
- (9) IC 32-2-1-17.
- (10) IC 32-2-1-18.

As added by P.L.220-2011, SEC.520.

IC 32-18-2-1

Applicability of chapter

Sec. 1. (a) This chapter applies to all transfers made and obligations incurred after June 30, 1994.

(b) This chapter does not apply to a transfer made or an obligation incurred before July 1, 1994.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-2

"Asset" defined

Sec. 2. (a) As used in this chapter, "asset" means property of a debtor.

(b) The term does not include any of the following:

- (1) Property, to the extent the property is encumbered by a valid lien.
- (2) Property, to the extent the property is generally exempt under law other than federal bankruptcy law.
- (3) An interest in property held in tenancy by the entireties to the extent the interest is not subject to process by a creditor holding a claim against only one (1) tenant.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-3

"Claim" defined

Sec. 3. As used in this chapter, "claim" means a right to payment, whether the right is:

- (1) reduced to judgment or not;
- (2) liquidated or unliquidated;

- (3) fixed or contingent;
- (4) matured or unmatured;
- (5) disputed or undisputed;
- (6) legal or not;
- (7) equitable or not; or
- (8) secured or unsecured.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-4

"Creditor" defined

Sec. 4. As used in this chapter, "creditor" means a person who has a claim.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-5

"Debt" defined

Sec. 5. As used in this chapter, "debt" means liability on a claim.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-6

"Debtor" defined

Sec. 6. As used in this chapter, "debtor" means a person who is liable on a claim.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-7

"Lien" defined

Sec. 7. (a) As used in this chapter, "lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation.

(b) The term includes any of the following:

- (1) A security interest created by agreement.
- (2) A judicial lien obtained by legal or equitable process or proceedings.
- (3) A common law lien.
- (4) A statutory lien.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-8

"Person" defined

Sec. 8. As used in this chapter, "person" means an individual, a partnership, a corporation, a limited liability company, an association, an organization, a government, a governmental subdivision or agency, a business trust, an estate, a trust, or any other legal or commercial entity.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-9

"Property" defined

Sec. 9. As used in this chapter, "property" means anything that can be the subject of ownership.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-10

"Transfer" defined

Sec. 10. (a) As used in this chapter, "transfer" means any mode of disposing of or parting with an asset or an interest in an asset, whether the mode is direct or indirect, absolute or conditional, or voluntary or involuntary.

(b) The term includes payment of money, release, lease, and creation of a lien or other encumbrance.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-11

"Valid lien" defined

Sec. 11. As used in this chapter, "valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-12

Insolvency

Sec. 12. (a) For purposes of this section, assets do not include property that has been:

- (1) transferred, concealed, or removed with intent to hinder, delay, or defraud creditors; or
- (2) transferred in a manner making the transfer voidable under this chapter.

(b) For purposes of this section, 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 under this section.

(c) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(d) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent. This presumption imposes upon the party against whom the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(e) A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over each general partner's nonpartnership debts.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-13

Value

Sec. 13. (a) 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.

(b) For purposes of sections 14(2) and 15 of this chapter, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset through 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.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by the debtor and transferee to be contemporaneous and is in fact substantially contemporaneous. *As added by P.L.2-2002, SEC.3.*

IC 32-18-2-14

Transfers fraudulent as to present and future creditors

Sec. 14. A transfer made or an obligation incurred by a debtor is fraudulent 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:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) 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; or
 - (B) intended to incur or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as the debts became due.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-15

Transfers fraudulent as to present creditors

Sec. 15. A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if:

- (1) the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and
- (2) the debtor:
 - (A) was insolvent at that time; or
 - (B) became insolvent as a result of the transfer or obligation.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-16

When transfer is made or obligation incurred

Sec. 16. The following apply for purposes of this chapter:

(1) A transfer is made:

(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 whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(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 (other than under this chapter) that is superior to the interest of the transferee.

(2) If applicable law permits a transfer to be perfected under subdivision (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is considered made immediately before the commencement of the action.

(3) If applicable law does not permit a transfer to be perfected under subdivision (1), the transfer is made when it becomes effective between the debtor and the transferee.

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

(5) An obligation is incurred:

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-17

Remedies of creditor

Sec. 17. (a) In an action for relief against a transfer or an obligation under this chapter, a creditor, subject to the limitations in section 18 of this chapter, may obtain any of the following:

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

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by IC 34-25-2-1 or any other applicable statute providing for attachment or other provisional remedy against debtors generally.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:

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

(B) Appointment of a receiver to take charge of the asset

transferred or of the property of the transferee.

(C) Any other relief the circumstances require.

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

As added by P.L.2-2002, SEC.3.

IC 32-18-2-18

Transferee's defenses, liability, and protections

Sec. 18. (a) A transfer or an obligation is not voidable under section 14(1) of this chapter against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this chapter, to the extent a transfer is voidable in an action by a creditor under section 17(a)(1) of this chapter, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) 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.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under section 14(2) or section 15 of this chapter if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is permitted by the lease and applicable law; or

(2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-19

Statute of limitations; extinguishment of cause of action

Sec. 19. A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless brought as follows:

(1) If brought under section 14(1) of this chapter, an action is extinguished unless brought not later than the later of the

following:

(A) Four (4) years after the transfer was made or the obligation was incurred.

(B) One (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(2) If brought under section 14(2) or 15(1) of this chapter, an action is extinguished unless it is brought not later than four (4) years after the transfer was made or the obligation was incurred.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-20

Supplementary provisions

Sec. 20. Unless superseded by this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement this chapter.

As added by P.L.2-2002, SEC.3.

IC 32-18-2-21

Uniformity of application and construction

Sec. 21. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

As added by P.L.2-2002, SEC.3.