

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.—(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(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; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(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 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; and

(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4961.)

§ 3305. When transfer is made or obligation is incurred

For the purposes of this subchapter:

(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, otherwise than under this subchapter, a judicial lien that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as approved in paragraph (1) and the transfer is not so perfected before the commencement of an action or proceeding for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action or proceeding.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (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 executed by the obligor, when such writing is delivered to or for the benefit of the obligee.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4962.)

§ 3306. Remedies of the United States

(a) IN GENERAL.—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;

(2) a remedy under this chapter against the asset transferred or other property of the transferee; or

(3) any other relief the circumstances may require.

(b) LIMITATION.—A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought—

(1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or

(3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4963.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

§ 3307. Defenses, liability, and protection of transferee

(a) **GOOD FAITH TRANSFER.**—A transfer or obligation is not voidable under section 3304(b) with respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

(b) **LIMITATION.**—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States under section 3306(a)(1), the United States may recover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. 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 any subsequent transferee of such good-faith transferee.

(c) **VALUE OF ASSET.**—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) **RIGHTS OF GOOD FAITH TRANSFEREES AND OBLIGEEES.**—Notwithstanding voidability of a transfer or an obligation under this subchapter, 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) **EXCEPTIONS.**—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

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

(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

(f) **LIMITATION OF VOIDABILITY.**—A transfer is not voidable under section 3304(a)(2)—

(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4963.)

§ 3308. Supplementary provision

Except as provided in this subchapter, 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 shall apply to actions and proceedings under this subchapter.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4964.)

CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION

Sec.	Definitions.
3701.	Definitions.
3702.	Unlawful sports gambling.
3703.	Injunctions.
3704.	Applicability.

§ 3701. Definitions

For purposes of this chapter—

(1) the term “amateur sports organization” means—

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term “governmental entity” means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),

(3) the term “professional sports organization” means—

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term “person” has the meaning given such term in section 1 of title 1, and

(5) the term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

(Added Pub. L. 102-559, §2(a), Oct. 28, 1992, 106 Stat. 4227.)

EFFECTIVE DATE

Pub. L. 102-559, §3, Oct. 28, 1992, 106 Stat. 4229, provided that: “This Act [enacting this chapter and provisions set out as a note under section 1 of this title] shall take effect on January 1, 1993.”

§ 3702. Unlawful sports gambling

It shall be unlawful for—

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or