
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 629 Session of
2017

INTRODUCED BY RESCHENTHALER, RAFFERTY, MENSCH, BARTOLOTTA,
FOLMER, VOGEL AND WHITE, APRIL 18, 2017

REFERRED TO BANKING AND INSURANCE, APRIL 18, 2017

AN ACT

1 Amending Titles 12 (Commerce and Trade) and 23 (Domestic
2 Relations) of the Pennsylvania Consolidated Statutes, in
3 fraudulent transfers, further providing for short title of
4 chapter and definitions, for insolvency, for value, for
5 transfers fraudulent as to present and future creditors, for
6 transfers fraudulent as to present creditors, for when
7 transfer is made or obligation is incurred, for remedies of
8 creditors, for defenses, liability and protection of
9 transferee and for extinguishment of cause of action,
10 providing for governing law and for application to series
11 organization, further providing for supplementary provisions
12 and providing for uniformity of application and construction
13 and for relation to Electronic Signatures in Global and
14 National Commerce Act; and, in support matters generally,
15 further providing for continuing jurisdiction over support
16 orders.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. Chapter 51 heading of Title 12 of the
20 Pennsylvania Consolidated Statutes is amended to read:

21 CHAPTER 51

22 [FRAUDULENT TRANSFERS]

23 VOIDABLE TRANSACTIONS

24 Section 2. Sections 5101, 5102, 5103, 5104, 5105, 5106,
25 5107, 5108 and 5109 of Title 12 are amended to read:

1 § 5101. Short title of chapter and definitions.

2 (a) Short title of chapter.--This chapter, that was formerly
3 cited as the Pennsylvania Uniform Fraudulent Transfer Act, shall
4 be known and may be cited as the Pennsylvania Uniform
5 [Fraudulent Transfer] Voidable Transactions Act.

6 (b) Definitions.--The following words and phrases when used
7 in this chapter shall have the meanings given to them in this
8 subsection unless the context clearly indicates otherwise:

9 "Asset." Property of a debtor. The term does not include:

10 (1) property to the extent it is encumbered by a valid
11 lien;

12 (2) property to the extent it is generally exempt under
13 nonbankruptcy law; or

14 (3) an interest in property held in tenancy by the
15 entirety to the extent it is not subject to process by a
16 creditor holding a claim against only one tenant.

17 "Claim." [A] Except as used in "claim for relief," a right
18 to payment, whether or not the right is reduced to judgment,
19 liquidated, unliquidated, fixed, contingent, matured, unmatured,
20 disputed, undisputed, legal, equitable, secured or unsecured.

21 "Creditor." A person [who] that has a claim.

22 "Debt." Liability on a claim.

23 "Debtor." A person [who] that is liable on a claim.

24 "Electronic." Relating to technology having electrical,
25 digital, magnetic, wireless, optical, electromagnetic or similar
26 capabilities.

27 "Lien." A charge against or an interest in property to
28 secure payment of a debt or performance of an obligation. The
29 term includes a security interest created by agreement, a
30 judicial lien obtained by legal or equitable process or

1 proceedings, a common law lien or a statutory lien.

2 "Organization." A person other than an individual.

3 "Person." An individual, partnership, [corporation,
4 association, organization,] estate, business or nonprofit
5 entity, public corporation, government or governmental
6 subdivision [or], agency[, business trust, estate], trust or
7 instrumentality or [any] other legal [or commercial] entity.

8 "Property." Anything that may be the subject of ownership.

9 "Record." Information that is inscribed on a tangible medium
10 or that is stored in an electronic or other medium and is
11 retrievable in perceivable form.

12 "Sign." With present intent to authenticate or adopt a
13 record:

14 (1) to execute or adopt a tangible symbol; or

15 (2) to attach to or logically associate with the record
16 an electronic symbol, sound or process.

17 "Transfer." Every mode, direct or indirect, absolute or
18 conditional, voluntary or involuntary, of disposing of or
19 parting with an asset or an interest in an asset. The term
20 includes payment of money, release, lease, license and creation
21 of a lien or other encumbrance.

22 "Valid lien." A lien that is effective against the holder of
23 a judicial lien subsequently obtained by legal or equitable
24 process or proceedings.

25 § 5102. Insolvency.

26 (a) General rule.--A debtor is insolvent if, at fair
27 [valuations] valuation, the sum of the debtor's debts is greater
28 than [all] the sum of the debtor's assets.

29 (b) Presumption of insolvency.--A debtor [who] that is
30 generally not paying the debtor's debts as they become due other

1 than as a result of a bona fide dispute is presumed to be
2 insolvent. [This] The presumption [shall impose] imposes on the
3 party against [whom] which the presumption is directed the
4 burden of proving that the nonexistence of insolvency is more
5 probable than its existence.

6 [(c) When partnerships are insolvent.--A partnership is
7 insolvent under subsection (a) if, at fair valuations, the sum
8 of the partnership's debts is greater than the aggregate of all
9 of the partnership's assets and the sum of the excess of the
10 value of each general partner's nonpartnership assets over the
11 partner's nonpartnership debts.

12 (d) [(c) Exclusion of certain assets.--Assets under this
13 section do not include property that has been transferred,
14 concealed or removed with intent to hinder, delay or defraud
15 creditors or that has been transferred in a manner making the
16 transfer [fraudulent] voidable under this chapter.

17 [(e) [(d) Exclusion of certain debts.--Debts under this
18 section do not include an obligation to the extent it is secured
19 by a valid lien on property of the debtor not included as an
20 asset.

21 § 5103. Value.

22 (a) General rule.--Value is given for a transfer or an
23 obligation if, in exchange for the transfer or obligation,
24 property is transferred or an antecedent debt is secured or
25 satisfied, but value does not include an unperformed promise
26 made otherwise than in the ordinary course of the promisor's
27 business to furnish support to the debtor or another person.

28 (b) Reasonably equivalent value.--For the purposes of
29 sections 5104(a)(2) (relating to [transfers fraudulent] transfer
30 or obligation voidable as to present [and] or future [creditors]

1 creditor) and 5105 (relating to [transfers fraudulent] transfer
2 or obligation voidable as to present [creditors] creditor), a
3 person gives reasonably equivalent value if the person acquires
4 an interest of the debtor in an asset pursuant to a regularly
5 conducted, noncollusive foreclosure sale or the exercise of a
6 power of sale for the acquisition or disposition of the interest
7 of the debtor upon default under a mortgage, deed of trust or
8 security agreement or pursuant to a regularly conducted,
9 noncollusive execution sale.

10 § 5104. [Transfers fraudulent] Transfer or obligation voidable
11 as to present [and] or future [creditors] creditor.

12 (a) General rule.--A transfer made or obligation incurred by
13 a debtor is [fraudulent] voidable as to a creditor, whether the
14 creditor's claim arose before or after the transfer was made or
15 the obligation was incurred, if the debtor made the transfer or
16 incurred the obligation:

17 (1) with actual intent to hinder, delay or defraud any
18 creditor of the debtor; or

19 (2) without receiving a reasonably equivalent value in
20 exchange for the transfer or obligation, and the debtor:

21 (i) was engaged or was about to engage in a business
22 or a transaction for which the remaining assets of the
23 debtor were unreasonably small in relation to the
24 business or transaction; or

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

28 (b) Certain factors.--In determining actual intent under
29 subsection (a) (1), consideration may be given, among other
30 factors, to whether:

- 1 (1) the transfer or obligation was to an insider;
- 2 (2) the debtor retained possession or control of the
- 3 property transferred after the transfer;
- 4 (3) the transfer or obligation was disclosed or
- 5 concealed;
- 6 (4) before the transfer was made or obligation was
- 7 incurred, the debtor had been sued or threatened with suit;
- 8 (5) the transfer was of substantially all the debtor's
- 9 assets;
- 10 (6) the debtor absconded;
- 11 (7) the debtor removed or concealed assets;
- 12 (8) the value of the consideration received by the
- 13 debtor was reasonably equivalent to the value of the asset
- 14 transferred or the amount of the obligation incurred;
- 15 (9) the debtor was insolvent or became insolvent shortly
- 16 after the transfer was made or the obligation was incurred;
- 17 (10) the transfer occurred shortly before or shortly
- 18 after a substantial debt was incurred; and
- 19 (11) the debtor transferred the essential assets of the
- 20 business to a lienor who transferred the assets to an insider
- 21 of the debtor.

22 (c) Burden of proof.--A creditor making a claim for relief
23 under subsection (a) has the burden of proving the elements of
24 the claim for relief by a preponderance of the evidence.

25 § 5105. [Transfers fraudulent] Transfer or obligation voidable
26 as to present [creditors] creditor.

27 (a) General rule.--A transfer made or obligation incurred by
28 a debtor is [fraudulent] voidable as to a creditor whose claim
29 arose before the transfer was made or the obligation was
30 incurred if the debtor made the transfer or incurred the

1 obligation without receiving a reasonably equivalent value in
2 exchange for the transfer or obligation and the debtor was
3 insolvent at that time or the debtor became insolvent as a
4 result of the transfer or obligation.

5 (b) Burden of proof.--Subject to section 5102(b) (relating
6 to insolvency), a creditor making a claim for relief under
7 subsection (a) has the burden of proving the elements of the
8 claim for relief by a preponderance of the evidence.

9 § 5106. When transfer is made or obligation is incurred.

10 For the purposes of this chapter:

11 (1) A transfer is made:

12 (i) with respect to an asset that is real property
13 other than a fixture, but including the interest of a
14 seller or purchaser under a contract for the sale of the
15 asset, when the transfer is so far perfected that a good
16 faith purchaser of the asset from the debtor against
17 [whom] which applicable law permits the transfer to be
18 perfected cannot acquire an interest in the asset that is
19 superior to the interest of the transferee; and

20 (ii) with respect to an asset that is not real
21 property or that is a fixture, when the transfer is so
22 far perfected that a creditor on a simple contract cannot
23 acquire a judicial lien otherwise than under this chapter
24 that is superior to the interest of the transferee.

25 (2) If applicable law permits the transfer to be
26 perfected as provided in paragraph (1) and the transfer is
27 not so perfected before the commencement of an action for
28 relief under this chapter, the transfer is made immediately
29 before the commencement of the action.

30 (3) If applicable law does not permit the transfer to be

1 perfected as provided in paragraph (1), the transfer is made
2 when it becomes effective between the debtor and the
3 transferee.

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

6 (5) An obligation is incurred:

7 (i) if oral, when it becomes effective between the
8 parties; or

9 (ii) if evidenced by a [writing] record, when the
10 [writing executed] record signed by the obligor is
11 delivered to or for the benefit of the obligee.

12 § 5107. Remedies of [creditors] creditor.

13 (a) Available remedies.--In an action for relief against a
14 transfer or obligation under this chapter, a creditor, subject
15 to the limitations in sections 5108 (relating to defenses,
16 liability and protection of transferee or obligee) and 5109
17 (relating to extinguishment of [cause of action] claim for
18 relief), may obtain:

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

21 (2) An attachment or other provisional remedy against
22 the asset transferred or other property of the transferee [in
23 accordance with the procedure prescribed by] if available
24 under applicable law.

25 (3) Subject to applicable principles of equity and in
26 accordance with applicable rules of civil procedure:

27 (i) an injunction against further disposition by the
28 debtor or a transferee, or both, of the asset transferred
29 or of other property;

30 (ii) appointment of a receiver to take charge of the

1 asset transferred or of other property of the transferee;
2 or
3 (iii) any other relief the circumstances may
4 require.

5 (b) Execution.--If a creditor has obtained a judgment on a
6 claim against the debtor, the creditor, if the court so orders,
7 subject to the limitations of sections 5108 and 5109, may levy
8 execution on the asset transferred or its proceeds.

9 § 5108. Defenses, liability and protection of transferee or
10 obligee.

11 (a) Certain transfers or obligations not [fraudulent]
12 voidable--A transfer or obligation is not [fraudulent] voidable
13 under section 5104(a)(1) (relating to [transfers fraudulent]
14 transfer or obligation voidable as to present [and] or future
15 [creditors] creditor) against a person [who] that took in good
16 faith and for a reasonably equivalent value given the debtor or
17 against any subsequent transferee or obligee.

18 (b) Judgment for certain voidable transfers.--To the extent
19 a transfer is avoidable in an action by a creditor under section
20 5107(a)(1) (relating to remedies of creditor), the following
21 rules apply:

22 (1) Except as otherwise provided in this section, [to
23 the extent a transfer is voidable in an action by a creditor
24 under section 5107(a)(1) (relating to remedies of
25 creditors),] the creditor may recover judgment for the value
26 of the asset transferred, as adjusted under subsection (c),
27 or the amount necessary to satisfy the creditor's claim,
28 whichever is less. The judgment may be entered against:

29 [(1)] (i) the first transferee of the asset or the
30 person for whose benefit the transfer was made; or

1 [(2) any subsequent transferee other than] (ii) an
2 immediate or mediate transferee of the first transferee,
3 other than:

4 (A) a good faith transferee [who] that took for
5 value [or from any subsequent transferee.]; or

6 (B) an immediate or mediate good faith
7 transferee of a person described in clause (A).

8 (2) Recovery under section 5107(a)(1) or (b) of or from
9 the asset transferred or its proceeds, by levy or otherwise,
10 is available only against a person described in paragraph
11 (1).

12 (c) Measure of recovery.--If the judgment under subsection
13 (b) is based upon the value of the asset transferred, the
14 judgment must be for an amount equal to the value of the asset
15 at the time of the transfer, subject to adjustment as the
16 equities may require.

17 (d) Rights of good faith transferee or obligee.--
18 Notwithstanding voidability of a transfer or an obligation under
19 this chapter, a good faith transferee or obligee is entitled, to
20 the extent of the value given the debtor for the transfer or
21 obligation, to:

22 (1) a lien on or a right to retain [any] an interest in
23 the asset transferred;

24 (2) enforcement of [any] an obligation incurred; or

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

27 (e) Certain transfers not [fraudulent] voidable.--A transfer
28 is not [fraudulent] voidable under section 5104(a)(2) or 5105
29 (relating to [transfers fraudulent] transfer or obligation
30 voidable as to present [creditors] creditor) if the transfer

1 results from:

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

5 (2) enforcement of a security interest in compliance
6 with 13 Pa.C.S. Div. 9 (relating to secured transactions),
7 other than an acceptance of collateral in full or partial
8 satisfaction of the obligations it secures under 13 Pa.C.S. §
9 9620 (relating to acceptance of collateral in full or partial
10 satisfaction of obligation; compulsory disposition of
11 collateral).

12 The references to 13 Pa.C.S. Div. 9 and 13 Pa.C.S. § 9620 in
13 paragraph (2) shall also be deemed to refer to the corresponding
14 provisions of the Uniform Commercial Code as in effect in any
15 other jurisdiction.

16 (f) Burden of proof.--The following rules determine the
17 burden of proving matters referred to in this section:

18 (1) A party that seeks to invoke subsection (a), (d) or
19 (e) has the burden of proving the applicability of that
20 subsection.

21 (2) Except as otherwise provided in paragraphs (3) and
22 (4), the creditor has the burden of proving each applicable
23 element of subsection (b) or (c).

24 (3) The transferee has the burden of proving the
25 applicability to the transferee of subsection (b)(1)(ii)(A)
26 or (B).

27 (4) A party that seeks adjustment under subsection (c)
28 has the burden of proving the adjustment.

29 (g) Standard of proof.--The standard of proof required to
30 establish matters referred to in this section is preponderance

1 of the evidence.

2 § 5109. Extinguishment of [cause of action] claim for relief.

3 A [cause of action] claim for relief with respect to a
4 [fraudulent] transfer or obligation under this chapter is
5 extinguished unless action is brought:

6 (1) under section 5104(a)(1) (relating to [transfers
7 fraudulent] transfer or obligation voidable as to present
8 [and] or future [creditors] creditor), [within] not later
9 than four years after the transfer was made or the obligation
10 was incurred or, if later, [within] not later than one year
11 after the transfer or obligation was or could reasonably have
12 been discovered by the claimant; or

13 (2) under section 5104(a)(2) or [5105] 5105(a) (relating
14 to [transfers fraudulent] transfer or obligation voidable as
15 to present [creditors] creditor), [within] not later than
16 four years after the transfer was made or the obligation was
17 incurred.

18 Section 3. Title 12 is amended by adding sections to read:

19 § 5110. Governing law.

20 (a) Location of debtor.--In this section, the following
21 rules determine a debtor's location:

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

24 (2) A debtor that is an organization and has only one
25 place of business is located at the organization's place of
26 business.

27 (3) A debtor that is an organization and has more than
28 one place of business is located at the organization's chief
29 executive office.

30 (b) Governing law.--A claim for relief in the nature of a

1 claim for relief under this chapter is governed by the local law
2 of the jurisdiction in which the debtor is located when the
3 transfer is made or the obligation is incurred.

4 § 5111. Application to series organization.

5 (a) Separate person.--A series organization and a protected
6 series of the series organization is a separate person for
7 purposes of this chapter, even if for other purposes a protected
8 series is not a person separate from the series organization or
9 other protected series of the series organization.

10 (b) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection unless the context clearly indicates otherwise:

13 "Protected series." An arrangement, however denominated,
14 created by a series organization that, pursuant to the law under
15 which the series organization is organized, has the
16 characteristics specified for a series organization.

17 "Series organization." An organization that, pursuant to the
18 law under which the organization is organized, has the following
19 characteristics:

20 (1) The organic record of the organization provides for
21 creation by the organization of one or more protected series,
22 however denominated, with respect to specified property of
23 the organization, and for records to be maintained for each
24 protected series that identifies the property of or
25 associated with the protected series.

26 (2) Debt incurred or existing with respect to the
27 activities of, or property of or associated with, a
28 particular protected series is enforceable against the
29 property of or associated with the protected series only, and
30 not against the property of or associated with the

1 organization or other protected series of the organization.

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

7 Section 4. Section 5110 of Title 12 is renumbered to read:

8 § [5110] 5112. Supplementary provisions.

9 Unless displaced by the provisions of this chapter, the
10 principles of law and equity, including the law merchant and the
11 law relating to principal and agent, estoppel, laches, fraud,
12 misrepresentation, duress, coercion, mistake, insolvency or
13 other validating or invalidating cause, supplement its
14 provisions.

15 Section 5. Title 12 is amended by adding sections to read:

16 § 5113. Uniformity of application and construction.

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

20 § 5114. Relation to Electronic Signatures in Global and
21 National Commerce Act.

22 This chapter modifies, limits or supersedes the Electronic
23 Signatures in Global and National Commerce Act (Public Law 106-
24 229, 15 U.S.C. § 7001 et seq.), but does not modify, limit or
25 supersede section 101(c) of the Electronic Signatures in Global
26 and National Commerce Act, or authorize electronic delivery of a
27 notice described in section 103(b) of the Electronic Signatures
28 in Global and National Commerce Act.

29 Section 6. Section 4352(g.3) of Title 23 is amended to read:

30 § 4352. Continuing jurisdiction over support orders.

1 * * *

2 (g.3) [Fraudulent] Voidable transfers.--The court may void
3 any [fraudulent] voidable transfer by the obligor pursuant to 12
4 Pa.C.S. Ch. 51 (relating to [fraudulent transfers] voidable
5 transactions). It shall be a rebuttable presumption that a
6 transfer by an obligor is [fraudulent] voidable as to an obligee
7 if the transfer was made for less than reasonably equivalent
8 value and the transfer occurred after the initiation of a
9 proceeding to establish or enforce support.

10 * * *

11 Section 7. This act shall apply as follows:

12 (1) This act shall apply to transfers made or
13 obligations incurred on or after the effective date of this
14 act.

15 (2) This act shall not apply to transfers made or
16 obligations incurred before the effective date of this act.

17 (3) This act shall not apply to rights of action that
18 have accrued before the effective date of the enacting
19 legislation.

20 (4) For a purpose specified under this section,
21 transfers are made and obligations are incurred at the time
22 provided under 12 Pa.C.S. § 5106.

23 Section 8. This act shall take effect in 60 days.