

2017 -- S 0838

=====
LC002433
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

—————
A N A C T

RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -
UNIFORM FRAUDULENT TRANSFER ACT

Introduced By: Senators Archambault, Lombardo, Quezada, Ciccone, and Lombardi

Date Introduced: April 27, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of Chapter 6-16 of the General Laws entitled "Uniform Fraudulent
2 Transfer Act" is hereby amended to read as follows:

3 ~~CHAPTER 6-16~~

4 ~~Uniform Fraudulent Transfer Act~~

5 CHAPTER 6-16

6 UNIFORM VOIDABLE TRANSACTIONS ACT

7 SECTION 2. Sections 6-16-1, 6-16-2, 6-16-4, 6-16-5, 6-16-5.1, 6-16-6, 6-16-7, 6-16-8,
8 6-16-9 and 6-16-12 of the General Laws in Chapter 6-16 entitled "Uniform Fraudulent Transfer
9 Act" are hereby amended to read as follows:

10 **6-16-1. Definitions.**

11 As used in this chapter:

12 (1) "Affiliate" means:

13 (i) A person who directly or indirectly owns, controls, or holds with power to vote twenty
14 percent (20%) or more of the outstanding voting securities of the debtor, other than a person who
15 holds the securities:

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

17 (B) Solely to secure a debt, if the person has not exercised the power to vote;

18 (ii) A corporation, twenty percent (20%) or more of whose outstanding voting securities

1 are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person
2 who directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or
3 more of the outstanding voting securities of the debtor, other than a person who holds the
4 securities :

5 (A) As a fiduciary or agent without sole power to vote the securities; or

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

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

9 (iv) A person who operates the debtor's business under a lease or other agreement or
10 controls substantially all of the debtor's assets.

11 (2) "Asset" means property of a debtor, but the term does not include:

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

13 (ii) Property to the extent it is generally exempt under nonbankruptcy law; or

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

16 (3) "Claim" means a right to payment, whether or not the right is reduced to judgment,
17 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,
18 equitable, secured, or unsecured.

19 (4) "Creditor" means a person who has a claim.

20 (5) "Debt" means liability on a claim.

21 (6) "Debtor" means a person who is liable on a claim.

22 (7) "Electronic" means relating to technology having electrical, digital, magnetic,
23 wireless, optical, electromagnetic, or similar capabilities.

24 ~~(7)~~(8) "Insider" includes:

25 (i) If the debtor is an individual:

26 (A) A relative of the debtor or of a general partner of the debtor;

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

28 (C) A general partner in a partnership described in subdivision (7)(i)(B); or

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

30 (ii) If the debtor is a corporation:

31 (A) A director of the debtor;

32 (B) An officer of the debtor;

33 (C) A person in control of the debtor;

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

- 1 (E) A general partner in a partnership described in subdivision (7)(ii)(D); or
2 (F) A relative of a general partner, director, officer, or person in control of the debtor.
3 (iii) If the debtor is a partnership:
4 (A) A general partner in the debtor;
5 (B) A relative of a general partner in, a general partner of, or a person in control of the
6 debtor;
7 (C) Another partnership in which the debtor is a general partner;
8 (D) A general partner in a partnership described in subdivision (7)(iii)(C); or
9 (E) A person in control of the debtor;
10 (iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
11 (v) A managing agent of the debtor.

12 ~~(8)~~(9) "Lien" means a charge against, or an interest in, property to secure payment of a
13 debt or performance of an obligation, and includes a security interest created by agreement; a
14 judicial lien obtained by legal or equitable process or proceedings; a common-law lien; or a
15 statutory lien.

16 (10) "Organization" means a person other than an individual.

17 ~~(9)~~(11) "Person" means an individual, estate, partnership, association, trust, business or
18 nonprofit entity, public corporation, government or governmental subdivision, agency, or
19 instrumentality, or other legal or commercial entity. ~~partnership, corporation, association,~~
20 ~~organization, government or governmental subdivision or agency, business trust, estate, trust, or~~
21 ~~any other legal or commercial entity, but does include the Rhode Island depositors economic~~
22 ~~protection corporation.~~

23 ~~(10)~~(12) "Property" means anything that may be the subject of ownership.

24 (13) "Record" means information that is inscribed on a tangible medium or that is stored
25 in an electronic or other medium, and retrievable in perceivable form.

26 ~~(11)~~(14) "Relative" means an individual related by consanguinity within the third degree
27 as determined by the common law, a spouse, or an individual related to a spouse within the third
28 degree as so determined, and includes an individual in an adoptive relationship within the third
29 degree.

30 (15) "Sign" means with present intent to authenticate or adopt a record:

31 (i) To execute or adopt a tangible symbol; or

32 (ii) To attach to or logically associate with the record an electronic symbol, sound, or
33 process.

34 ~~(12)~~(16) "Transfer" means every mode, direct or indirect, absolute or conditional,

1 voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and
2 includes payment of money, release, lease, [license](#), and creation of a lien or other encumbrance.

3 ~~(13)~~(17) "Valid lien" means a lien that is effective against the holder of a judicial lien
4 subsequently obtained by legal or equitable process or proceedings.

5 **6-16-2. Insolvency.**

6 (a) A debtor is insolvent if, [at a fair valuation](#), the sum of the debtor's debts is greater than
7 [the sum of the debtor's assets](#) ~~all of the debtor's assets at a fair valuation.~~

8 (b) A debtor who is generally not paying ~~his or her~~ [the debtor's](#) debts as they become due
9 [other than as a result of a bona fide dispute](#) is presumed to be insolvent. [The presumption imposes](#)
10 [on the party against whom the presumption is directed the burden of proving that the](#)
11 [nonexistence of insolvency is more probable than its existence.](#)

12 ~~(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is~~
13 ~~greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the~~
14 ~~excess of the value of each general partner's nonpartnership assets over the partner's~~
15 ~~nonpartnership debts.~~

16 ~~(d)~~(c) Assets under this section do not include property that has been transferred,
17 concealed, or removed with intent to hinder, delay, or defraud creditors or that have been
18 transferred in a manner making the transfer voidable under this chapter.

19 ~~(e)~~(d) Debts under this section do not include obligations to the extent they are secured
20 by a valid lien on property of the debtor not included as an asset.

21 **6-16-4. Transfers fraudulent as to present and future creditors. Transfers voidable** 22 **as to present and future creditors.**

23 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ [voidable](#) as to a
24 creditor, whether the creditor's claim arose before or after the transfer was made or the obligation
25 was incurred, if the debtor made the transfer or incurred the obligation:

26 (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

27 (2) Without receiving a reasonably equivalent value in exchange for the transfer or
28 obligation, and the debtor:

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

32 (ii) Intended to incur, or believed or reasonably should have believed that ~~he or she~~ [the](#)
33 [debtor](#) would incur, debts beyond ~~his or her~~ [the debtor's](#) ability to pay as they became due.

34 (b) In determining actual intent under subsection (a) (1) [of this section](#), consideration may

1 be given, among other factors, to whether:

2 (1) The transfer or obligation was to an insider;

3 (2) The debtor retained possession or control of the property transferred after the transfer;

4 (3) The transfer or obligation was disclosed or concealed;

5 (4) Before the transfer was made or obligation was incurred, the debtor had been sued or
6 threatened with suit;

7 (5) The transfer was of substantially all the debtor's assets;

8 (6) The debtor absconded;

9 (7) The debtor removed or concealed assets;

10 (8) The value of the consideration received by the debtor was reasonably equivalent to
11 the value of the asset transferred or the amount of the obligation incurred;

12 (9) The debtor was insolvent or became insolvent shortly after the transfer was made or
13 the obligation was incurred;

14 (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;
15 and

16 (11) The debtor transferred the essential assets of the business to a lienor who transferred
17 the assets to an insider of the debtor.

18 [\(c\) A creditor making a claim for relief under subsection \(a\) of this section has the burden
19 of proving the elements of the claim for relief by a preponderance of the evidence.](#)

20 ~~**6-16-5. Transfers fraudulent as to present creditors.**~~ **Transfers or obligations**
21 **voidable as to present creditors.**

22 (a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~ [voidable](#) as to a
23 creditor whose claim arose before the transfer was made or the obligation was incurred if the
24 debtor made the transfer or incurred the obligation without receiving a reasonably equivalent
25 value in exchange for the transfer or obligation and the debtor was insolvent at that time or the
26 debtor became insolvent as a result of the transfer or obligation.

27 (b) A transfer made by a debtor is ~~fraudulent~~ [voidable](#) as to a creditor whose claim arose
28 before the transfer was made if the transfer was made to an insider for an antecedent debt; the
29 debtor was insolvent at that time; and the insider had reasonable cause to believe that the debtor
30 was insolvent.

31 [\(c\) Subject to §16-16-2\(b\), a creditor making a claim for relief under subsection \(a\) or \(b\)
32 of this section has the burden of proving the elements of the claim for relief by a preponderance
33 of the evidence.](#)

34 ~~**6-16-5.1. Transfers fraudulent as to depository creditors of financial institutions**~~

1 ~~closed by proclamation of the governor dated January 1, 1991~~ **Remedies. Transfers**
2 **voidable as to depository creditors of financial institutions closed by proclamation of the**
3 **governor dated January 1, 1991 - Remedies.**

4 (a) A transfer made or obligation incurred by any financial institution closed by
5 proclamation of the governor dated January 1, 1991, is ~~fraudulent~~ **voidable** as to any depository
6 creditor of record of any such financial institution as of January 1, 1991, if the transfer or
7 obligation involved either:

8 (1) The withdrawal of deposits from the financial institution by any officer, director, or
9 employee of the financial institution or of the Rhode Island share and deposit indemnity
10 corporation, with knowledge of the actual or impending insolvency and/or the impending closing
11 of the financial institution or of the actual or impending insolvency of and/or the actual or
12 impending cessation of business by the Rhode Island share and deposit indemnity corporation,
13 and for the purpose of avoiding the loss of funds and/or access to funds in any depository account
14 in the financial institution;

15 (2) The encumbrance of any assets of the financial institution to or for the benefit of any
16 officer, director, or employee of the financial institution or of the Rhode Island share and deposit
17 indemnity corporation, with knowledge of the actual or impending insolvency and/or the
18 impending closing of the financial institution or of the actual or impending insolvency of and/or
19 the actual and/or impending cessation of business by the Rhode Island share and deposit
20 indemnity corporation, and for the purpose of avoiding the loss of funds and/or access to funds in
21 any depository account in the financial institution; or

22 (3) A transfer or obligation defined as ~~fraudulent~~ **voidable** under §§ 6-16-4 or 6-16-5.

23 (b) In addition to any remedies provided by § 6-16-7, (1) any financial institution closed
24 by proclamation of the governor dated January 1, 1991; (2) any assignees of and successors in
25 interest to any such financial institution; and (3) any depository creditor of record of any such
26 financial institution as of January 1, 1991, who suffers monetary loss as a result of a transfer or
27 conveyance defined as ~~fraudulent~~ **voidable** under this section or who is otherwise aggrieved by
28 the transfer or conveyance, shall have a private cause of action at law and in equity against any
29 officer, director, or employee of the financial institution or of the Rhode Island share and deposit
30 indemnity corporation to whom the subject transfer was made or to whom or for whose benefit
31 any assets of the financial institution were encumbered.

32 **6-16-6. When transfer is made or obligation is incurred.**

33 For the purposes of this chapter:

34 (1) A transfer is made:

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

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

9 (2) If applicable law permits the transfer to be perfected as provided in subdivision (1)
10 and the transfer is not so perfected before the commencement of an action for relief under this
11 chapter, the transfer is deemed made immediately before the commencement of the action;

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

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

16 (5) An obligation is incurred:

17 (i) If oral, when it becomes effective between the parties; or

18 (ii) If evidenced by a ~~writing~~ record, when the ~~writing executed~~ record signed by the
19 obligor is delivered to or for the benefit of the obligee.

20 ~~6-16-7. Remedies of creditors.~~ **Remedies of creditor.**

21 (a) In an action for relief against a transfer or obligation under this chapter, a creditor,
22 subject to the limitations in § 6-16-8, may obtain:

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

25 (2) An attachment or other provisional remedy against the asset transferred or other
26 property of the transferee available under applicable law; and ~~in accordance with the procedure~~
27 ~~prescribed by applicable statutes and rules of procedure;~~

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

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

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

34 (iii) Any other relief the circumstances may require.

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

3 ~~6-16-8. Defenses, liability, and protection of transferee.~~ **Defenses, liability, and**
4 **protection of transferee or obligee.**

5 (a) A transfer or obligation is not voidable under § 6-16-4(a)(1) against a person who
6 took in good faith and for a reasonably equivalent value given the debtor or against any
7 subsequent transferee or obligee.

8 (b) ~~Except as otherwise provided in this section, to~~ To the extent a transfer is voidable in
9 an action by a creditor under § 6-16-7(a)(1), the following rules apply:

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

13 ~~(1)(i)~~ (i) The first transferee of the asset or the person for whose benefit the transfer was
14 made; or

15 ~~(2)(ii) Any subsequent transferee other than a good faith transferee who took for value or~~
16 ~~from any subsequent transferee.~~ An immediate or mediate transferee of the first transferee, other
17 than:

18 (A) A good-faith transferee that took for value; or

19 (B) An immediate or mediate good-faith transferee of a person described in subsection
20 (A) of this section.

21 (2) Recovery pursuant to §§6-16-7(a)(1) or (b) or from the asset transferred or its
22 proceeds, by levy or otherwise, is available only against a person described in subsection (1)(i) or
23 (ii) of this section.

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

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

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

31 (2) Enforcement of ~~any~~ an obligation incurred; or

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

33 (e) A transfer is not voidable under § 6-16-4(a)(2) or 6-16-5 if the transfer results from:

34 (1) Termination of a lease upon default by the debtor when the termination is pursuant to

1 the lease and applicable law; or

2 (2) Enforcement of a security interest in compliance with ~~chapter 9 of title 6A of the~~
3 ~~Uniform Commercial Code.~~ Article 9 of the Uniform Commercial Code, other than acceptance of
4 collateral in full or partial satisfaction of the obligation it secures.

5 (f) A transfer is not voidable under § 6-16-5(b):

6 (1) To the extent the insider gave new value to or for the benefit of the debtor after the
7 transfer was made ~~unless~~ except to the extent the new value was secured by a valid lien;

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

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

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

14 (1) A party that seeks to invoke §§6-16-8 (a), (d), (e), or (f) has the burden of proving the
15 applicability of that subsection.

16 (2) Except as otherwise provided in §§6-16-8(g)(3) and 6-16-8(g)(4), the creditor has the
17 burden of proving each applicable element of subsection (b) or (c) of this section.

18 (3) The transferee has the burden of proving the applicability to the transferee of
19 subsections (b)(1)(ii)(A) or (B) of this section.

20 (4) A party that seeks adjustment under subsection (c) of this section has the burden of
21 proving the adjustment.

22 (h) Proof of matters referred to in this section is sufficient if established by a
23 preponderance of the evidence.

24 **6-16-9. Extinguishment of cause of action. Extinguishment of claim for relief.**

25 A ~~cause of action~~ claim of relief with respect to a ~~fraudulent~~ transfer or obligation under
26 this chapter is extinguished unless action is brought:

27 (1) Under § 6-16-4(a)(1) ~~within~~ not later than four (4) years after the transfer was made
28 or the obligation was incurred or, if later, ~~within~~ not later than one year after the transfer or
29 obligation was or could reasonably have been discovered by the claimant;

30 (2) Under §§ 6-16-4(a)(2) or 6-16-5(a), ~~within~~ not later than four (4) years after the
31 transfer was made or the obligation was incurred; or

32 (3) Under § 6-16-5(b) ~~within~~ not later than one year after the transfer was made or the
33 obligation was incurred.

34 **6-16-12. Short title.**

1 This chapter may be cited as the ~~"Uniform Fraudulent Transfer Act"~~ "Uniform Voidable
2 Transactions Act".

3 SECTION 3. Chapter 6-16 of the General Laws entitled "Uniform Voidable Transactions
4 Act" is hereby amended by adding thereto the following sections:

5 **6-16-13. Governing law.**

6 (a) As used in this section, the following rules determine a debtor's location:

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

8 (2) A debtor that is an organization and has only one place of business is located at its
9 place of business.

10 (3) A debtor that is an organization and has more than one place of business is located at
11 its chief executive office.

12 (b) A claim for relief in the nature of a claim for relief under this chapter is governed by
13 the local law of the jurisdiction in which the debtor is located when the transfer is made or the
14 obligation is incurred.

15 **6-16-14. Application to series organization.**

16 (a) As used in this section:

17 (1) "Protected series" means an arrangement, however denominated, created by a series
18 organization that, pursuant to the law under which the series organization is organized, has the
19 characteristics set forth in subsection (a)(2) of this section.

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

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

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

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

33 (b) A series organization and each protected series of the organization is a separate
34 person for purposes of this chapter, even if for other purposes a protected series is not a person

1 [separate from the organization or other protected series of the organization.](#)

2 **6-16-15. Supplementary provisions.**

3 [Unless displaced by the provisions of this chapter, the principles of law and equity,](#)
4 [including the law merchant and the law relating to principal and agent, estoppel, laches, fraud,](#)
5 [misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause,](#)
6 [supplement its provisions.](#)

7 **6-16-16. Uniformity of application and construction.**

8 [This chapter shall be applied and construed to effectuate its general purpose to make](#)
9 [uniform the law with respect to the subject of this chapter among the states enacting it.](#)

10 **6-16-17. Relation to electronic signatures in global and national commerce act.**

11 [This chapter modifies, limits, or supercedes the Electronic Signatures in Global and](#)
12 [National Commerce Act, 15 U.S.C §7001 et seq., but does not modify, limit, or supersede](#)
13 [§101\(c\) of that act, 15 U.S.C. §7001\(c\), or authorize electronic delivery of any of the notices](#)
14 [described in §103\(b\) of that act, 15 U.S.C. §7003\(b\).](#)

15 SECTION 4. This act shall take effect upon passage; provided, that: (1) The amendments
16 apply to a transfer made or obligation incurred on or after the effective date of this act; (2) The
17 amendments do not apply to a transfer made or obligation incurred before the effective date of
18 this act; (3) The amendments do not apply to a right of action that has accrued before the effective
19 date of this act; and (4) For the foregoing purposes, a transfer is made and an obligation is
20 incurred at the time provided in §6-16-6. In addition, this act revises any reference to this chapter
21 by its former title in other general laws of this state.

=====
LC002433
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COMMERCIAL LAW - GENERAL REGULATORY PROVISIONS -
UNIFORM FRAUDULENT TRANSFER ACT

1 This act would amend the "Uniform Fraudulent Transfer Act" to be called the "Uniform
2 Voidable Transactions Act", and would also amend the definition of "person" contained in the
3 statute.

4 This act would take effect upon passage; provided, that: (1) The amendments apply to a
5 transfer made or obligation incurred on or after the effective date of this act; (2) The amendments
6 do not apply to a transfer made or obligation incurred before the effective date of this act; (3) The
7 amendments do not apply to a right of action that has accrued before the effective date of this act;
8 and (4) For the foregoing purposes, a transfer is made and an obligation is incurred at the time
9 provided in §6-16-6. In addition, this act revises any reference to this chapter by its former title in
10 other general laws of this state.

=====
LC002433
=====