

COMMERCE AND TRADE (12 PA.C.S.) AND DOMESTIC RELATIONS CODE (23
PA.C.S.) - OMNIBUS AMENDMENTS

Act of Dec. 22, 2017, P.L. 1249, No. 78

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No. 2017-78

SB 629

AN ACT

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

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

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

CHAPTER 51

[FRAUDULENT TRANSFERS]

VOIDABLE TRANSACTIONS

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

§ 5101. Short title of chapter and definitions.

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

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

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

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

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

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

"Claim." [A] **Except as used in "claim for relief,"** 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.

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

"Debt." Liability on a claim.

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

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

"Lien." A charge against or an interest in property to secure payment of a debt or performance of an obligation. The term 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.

"Organization." A person other than an individual.

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

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

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

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

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic symbol, sound or process.

"Transfer." 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. The term includes payment of money, release, lease, **license** and creation of a lien or other encumbrance.

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

§ 5102. Insolvency.

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

(b) Presumption of insolvency.--A debtor [who] **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. [This] **The** presumption [shall impose] **imposes** on the party against [whom] **which** the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

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

(d) [(c) Exclusion of certain assets.--Assets under this section 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 [fraudulent] **voidable** under this chapter.

[(e)] (d) Exclusion of certain debts.--Debts under this section 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.

§ 5103. Value.

(a) General rule.--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, but 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) Reasonably equivalent value.--For the purposes of sections 5104(a) (2) (relating to [transfers fraudulent] **transfer or obligation voidable** as to present [and] **or** future [creditors] **creditor**) and 5105 (relating to [transfers fraudulent] **transfer or obligation voidable** as to present [creditors] **creditor**), a person gives reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or the exercise 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 or pursuant to a regularly conducted, noncollusive execution sale.

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

(a) General rule.--A transfer made or obligation incurred by a debtor is [fraudulent] **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:

(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:

(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 the debtor would incur, debts beyond the debtor's ability to pay as they became due.

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

(1) the transfer or obligation was to an insider;

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

(3) the transfer or obligation was disclosed or concealed;

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

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

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) 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;

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

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

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

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

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

(a) **General rule.**--A transfer made or obligation incurred by a debtor is [fraudulent] **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.

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

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

For the purposes of this chapter:

(1) A transfer is made:

(i) 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] **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; and

(ii) 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 chapter that is superior to the interest of the transferee.

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

(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:

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

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

§ 5107. Remedies of [creditors] **creditor**.

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

(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] **if available under** applicable law.

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

(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; or

(iii) any other relief the circumstances may require.

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

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

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

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

(1) Except as otherwise provided in this section, [to the extent a transfer is voidable in an action by a creditor under section 5107(a)(1) (relating to remedies of creditors),] 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)] **(i)** the first transferee of the asset or the person for whose benefit the transfer was made; or

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

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

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

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

(c) Measure of recovery.--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) Rights of good faith transferee or obligee.--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] **an** interest in the asset transferred;

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

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

(e) Certain transfers not [fraudulent] **voidable**.--A transfer is not [fraudulent] **voidable** under section 5104(a)(2) or 5105 (relating to [transfers fraudulent] **transfer or obligation voidable** as to present [creditors] **creditor**) 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 13 Pa.C.S. Div. 9 (relating to secured transactions), other than an acceptance of collateral in full or partial satisfaction of the obligations it secures under 13 Pa.C.S. § 9620 (relating to acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral).

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

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

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

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

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

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

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

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

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

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

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

Section 3. Title 12 is amended by adding sections to read:
§ 5110. **Governing law**.

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

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

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

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

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

§ 5111. Application to series organization.

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

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

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

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

(1) The organic record of the organization provides for creation by the organization of one 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 identifies the property of or associated with the protected series.

(2) 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.

(3) 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.

Section 4. Section 5110 of Title 12 is renumbered to read: § [5110] **5112. Supplementary provisions.**

Unless displaced by the provisions of this chapter, 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 its provisions.

Section 5. Title 12 is amended by adding sections to read: § **5113. Uniformity of application and construction.**

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.

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

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

Section 6. Section 4352(g.3) of Title 23 is amended to read:
§ 4352. Continuing jurisdiction over support orders.

* * *

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

* * *

Section 7. This act shall apply as follows:

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

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

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

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

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

APPROVED--The 22nd day of December, A.D. 2017.

TOM WOLF