

684.4 Transfers fraudulent as to present and future creditors.

1. A transfer made or 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 under any of the following circumstances:

a. With actual intent to hinder, delay, or defraud any creditor of the debtor.

b. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, if either of the following applies:

(1) The debtor 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.

(2) The debtor 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.

2. In determining actual intent under subsection 1, paragraph "a", consideration may be given, among other factors, to any or all of the following:

a. Whether the transfer or obligation was to an insider.

b. Whether the debtor retained possession or control of the property transferred after the transfer.

c. Whether the transfer or obligation was disclosed or concealed.

d. Whether, before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

e. Whether the transfer was of substantially all the debtor's assets.

f. Whether the debtor absconded.

g. Whether the debtor removed or concealed assets.

h. Whether 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. Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

j. Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

k. Whether the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

94 Acts, ch 1121, §8

Referred to in §684.3, 684.8, 684.9