

MAR 8 1994  
Place On Calendar

HOUSE FILE 2384  
BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 666)

(P. 778)  
Passed House, Date 3-21-94  
Vote: Ayes 93 Nays 0

(P. 963)  
Passed Senate, Date 3/31/94  
Vote: Ayes 50 Nays 0

Approved April 2, 1994

A BILL FOR

- 1 An Act enacting the uniform fraudulent transfer Act.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 3
- 4

HOUSE FILE 2384

H-5524

- 1 Amend House File 2384 as follows:
- 2 1. Page 10, by inserting after line 3 the
- 3 following:
- 4 "Sec.         . NEW SECTION. 684.10 SUPPLEMENTARY
- 5 PROVISIONS.
- 6 Unless displaced by the provisions of this chapter,
- 7 the principles of law and equity, including the law
- 8 merchant and the law relating to principal and agent,
- 9 estoppel, laches, fraud, misrepresentation, duress,
- 10 coercion, mistake, insolvency, or other validating or
- 11 invalidating cause, supplement its provisions."
- 12 2. By renumbering as necessary.

By MILLAGE of Scott

H-5524 FILED MARCH 18, 1994

*Adopted 3-21-94  
(P 777)*

HF 2384

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1 Section 1. NEW SECTION. 684.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Affiliate" means any of the following:

4 a. A person who directly or indirectly owns, controls, or  
5 holds with power to vote, twenty percent or more of the  
6 outstanding voting securities of the debtor, other than a  
7 person who holds the securities as either of the following:

8 (1) As a fiduciary or agent without sole discretionary  
9 power to vote the securities.

10 (2) Solely to secure a debt, if the person has not  
11 exercised the power to vote.

12 b. A corporation twenty percent or more of whose  
13 outstanding voting securities are directly or indirectly  
14 owned, controlled, or held with power to vote, by the debtor  
15 or a person who directly or indirectly owns, controls, or  
16 holds with power to vote, twenty percent or more of the  
17 outstanding voting securities of the debtor, other than a  
18 person who holds the securities as either of the following:

19 (1) As a fiduciary or agent without sole power to vote the  
20 securities.

21 (2) Solely to secure a debt, if the person has not in fact  
22 exercised the power to vote.

23 c. A person whose business is operated by the debtor under  
24 a lease or other agreement, or a person substantially all of  
25 whose assets are controlled by the debtor.

26 d. A person who operates the debtor's business under a  
27 lease or other agreement or controls substantially all of the  
28 debtor's assets.

29 2. "Asset" means property of a debtor, but does not  
30 include any of the following:

31 a. Property to the extent it is encumbered by a valid  
32 lien.

33 b. Property to the extent it is generally exempt under  
34 nonbankruptcy law.

35 c. An interest in property held in tenancy by the

1 entireties to the extent it is not subject to process by a  
2 creditor holding a claim against only one tenant.

3 3. "Claim" means a right to payment, whether or not the  
4 right is reduced to judgment, liquidated, unliquidated, fixed,  
5 contingent, matured, unmatured, disputed, undisputed, legal,  
6 equitable, secured, or unsecured.

7 4. "Creditor" means a person who has a claim.

8 5. "Debt" means liability on a claim.

9 6. "Debtor" means a person who is liable on a claim.

10 7. "Insider" includes all of the following:

11 a. If the debtor is an individual, all of the following:

12 (1) A relative of the debtor or of a general partner of  
13 the debtor.

14 (2) A partnership in which the debtor is a general  
15 partner.

16 (3) A general partner in a partnership described in  
17 subparagraph (2).

18 (4) A corporation of which the debtor is a director,  
19 officer, or person in control.

20 b. If the debtor is a corporation, all of the following:

21 (1) A director of the debtor.

22 (2) An officer of the debtor.

23 (3) A person in control of the debtor.

24 (4) A partnership in which the debtor is a general  
25 partner.

26 (5) A general partner in a partnership described in  
27 subparagraph (4).

28 (6) A relative of a general partner, director, officer, or  
29 person in control of the debtor.

30 c. If the debtor is a partnership, all of the following:

31 (1) A general partner in the debtor.

32 (2) A relative of a general partner in, or a general  
33 partner of, or a person in control of the debtor.

34 (3) Another partnership in which the debtor is a general  
35 partner.

1 (4) A general partner in a partnership described in  
2 subparagraph (3).

3 (5) A person in control of the debtor.

4 d. An affiliate, or an insider of an affiliate as if the  
5 affiliate were the debtor.

6 e. A managing agent of the debtor.

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

13 9. "Person" means an individual, partnership, corporation,  
14 association, organization, government or governmental  
15 subdivision or agency, business trust, estate, trust, or any  
16 other legal or commercial entity.

17 10. "Property" means anything that may be the subject of  
18 ownership.

19 11. "Relative" means an individual related by  
20 consanguinity within the third degree as determined by the  
21 common law, a spouse, or an individual related to a spouse  
22 within the third degree as so determined, and includes an  
23 individual in an adoptive relationship within the third  
24 degree.

25 12. "Transfer" means every mode, direct or indirect,  
26 absolute or conditional, voluntary or involuntary, of  
27 disposing of or parting with an asset or an interest in an  
28 asset, and includes payment of money, release, lease, and  
29 creation of a lien or other encumbrance.

30 13. "Valid lien" means a lien that is effective against  
31 the holder of a judicial lien subsequently obtained by legal  
32 or equitable process or proceedings.

33 Sec. 2. NEW SECTION. 684.2 INSOLVENCY.

34 1. A debtor is insolvent if the sum of the debtor's debts  
35 is greater than all of the debtor's assets, at a fair

1 valuation.

2 2. A debtor who is generally not paying the debtor's debts  
3 as they become due is presumed to be insolvent.

4 3. A partnership is insolvent under subsection 1 if the  
5 sum of the partnership's debts is greater than the aggregate,  
6 at a fair valuation, of all of the partnership's assets, and  
7 the sum of the excess of the value of each general partner's  
8 nonpartnership assets over the partner's nonpartnership debts.

9 4. Assets under this section do not include property that  
10 has been transferred, concealed, or removed with intent to  
11 hinder, delay, or defraud creditors or that has been  
12 transferred in a manner making the transfer voidable under  
13 this chapter.

14 5. Debts under this section do not include an obligation  
15 to the extent it is secured by a valid lien on property of the  
16 debtor not included as an asset.

17 Sec. 3. NEW SECTION. 684.3 VALUE.

18 1. Value is given for a transfer or an obligation if, in  
19 exchange for the transfer or obligation, property is  
20 transferred or an antecedent debt is secured or satisfied, but  
21 value does not include an unperformed promise made otherwise  
22 than in the ordinary course of the promisor's business to  
23 furnish support to the debtor or another person.

24 2. For the purposes of section 684.4, subsection 1,  
25 paragraph "b", and section 684.5, a person gives a reasonably  
26 equivalent value if the person acquires an interest of the  
27 debtor in an asset pursuant to a regularly conducted,  
28 noncollusive foreclosure sale or execution of a power of sale  
29 for the acquisition or disposition of the interest of the  
30 debtor upon default under a mortgage, deed of trust, or  
31 security agreement.

32 3. A transfer is made for present value if the exchange  
33 between the debtor and the transferee is intended by them to  
34 be contemporaneous and is in fact substantially  
35 contemporaneous.

1     Sec. 4. NEW SECTION. 684.4 TRANSFERS FRAUDULENT AS TO  
2 PRESENT AND FUTURE CREDITORS.

3     1. A transfer made or obligation incurred by a debtor is  
4 fraudulent as to a creditor, whether the creditor's claim  
5 arose before or after the transfer was made or the obligation  
6 was incurred, if the debtor made the transfer or incurred the  
7 obligation under any of the following circumstances:

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

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

13     (1) The debtor was engaged or was about to engage in a  
14 business or a transaction for which the remaining assets of  
15 the debtor were unreasonably small in relation to the business  
16 or transaction.

17     (2) The debtor intended to incur, or believed or  
18 reasonably should have believed that the debtor would incur,  
19 debts beyond the debtor's ability to pay as they became due.

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

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

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

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

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

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

32     f. Whether the debtor absconded.

33     g. Whether the debtor removed or concealed assets.

34     h. Whether the value of the consideration received by the  
35 debtor was reasonably equivalent to the value of the asset

1 transferred or the amount of the obligation incurred.

2 i. Whether the debtor was insolvent or became insolvent  
3 shortly after the transfer was made or the obligation was  
4 incurred.

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

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

10 Sec. 5. NEW SECTION. 684.5 TRANSFERS FRAUDULENT AS TO  
11 PRESENT CREDITORS.

12 1. A transfer made or obligation incurred by a debtor is  
13 fraudulent as to a creditor whose claim arose before the  
14 transfer was made or the obligation was incurred if the debtor  
15 made the transfer or incurred the obligation without receiving  
16 a reasonably equivalent value in exchange for the transfer or  
17 obligation and the debtor was insolvent at that time or the  
18 debtor became insolvent as a result of the transfer or  
19 obligation.

20 2. A transfer made by a debtor is fraudulent as to a  
21 creditor whose claim arose before the transfer was made if the  
22 transfer was made to an insider for an antecedent debt, the  
23 debtor was insolvent at that time, and the insider had  
24 reasonable cause to believe that the debtor was insolvent.

25 Sec. 6. NEW SECTION. 684.6 WHEN TRANSFER IS MADE OR  
26 OBLIGATION IS INCURRED.

27 For the purposes of this chapter:

28 1. A transfer is made under either of the following cir-  
29 cumstances:

30 a. With respect to an asset that is real property other  
31 than a fixture, but including the interest of a seller or  
32 purchaser under a contract for the sale of the asset, when the  
33 transfer is so far perfected that a good-faith purchaser of  
34 the asset from the debtor against whom applicable law permits  
35 the transfer to be perfected cannot acquire an interest in the

1 asset that is superior to the interest of the transferee.

2 b. With respect to an asset that is not real property or  
3 that is a fixture, when the transfer is so far perfected that  
4 a creditor on a simple contract cannot acquire a judicial lien  
5 otherwise than under this chapter that is superior to the  
6 interest of the transferee.

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

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

16 4. A transfer is not made until the debtor has acquired  
17 rights in the asset transferred.

18 5. An obligation is incurred under either of the following  
19 circumstances:

- 20 a. If oral, when it becomes effective between the parties.
- 21 b. If evidenced by a writing, when the writing executed by  
22 the obligor is delivered to or for the benefit of the obligee.

23 Sec. 7. NEW SECTION. 684.7 REMEDIES OF CREDITORS.

24 1. In an action for relief against a transfer or  
25 obligation under this chapter, a creditor, subject to the  
26 limitations in section 684.8, may obtain any of the following:

- 27 a. Avoidance of the transfer or obligation to the extent  
28 necessary to satisfy the creditor's claim.
- 29 b. A remedy by any special action available under this  
30 subtitle, including attachment or other provisional remedy,  
31 against the asset transferred or other property of the  
32 transferee.

33 c. Subject to applicable principles of equity and in  
34 accordance with applicable rules of civil procedure, any of  
35 the following:



1 (1) An injunction against further disposition by the  
2 debtor or a transferee, or both, of the asset transferred or  
3 of other property.

4 (2) Appointment of a receiver to take charge of the asset  
5 transferred or of other property of the transferee.

6 (3) Any other relief the circumstances may require.

7 2. If a creditor has obtained a judgment on a claim  
8 against the debtor, the creditor, if the court so orders, may  
9 levy execution on the asset transferred or its proceeds.

10 Sec. 8. NEW SECTION. 684.8 DEFENSES, LIABILITY, AND  
11 PROTECTION OF TRANSFEREE.

12 1. A transfer or obligation is not voidable under section  
13 684.7, subsection 1, paragraph "a", against a person who took  
14 in good faith and for a reasonably equivalent value or against  
15 any subsequent transferee or obligee.

16 2. Except as otherwise provided in this section, to the  
17 extent a transfer is voidable in an action by a creditor under  
18 section 684.7, subsection 1, paragraph "a", the creditor may  
19 recover judgment for the value of the asset transferred, as  
20 adjusted under subsection 3, or the amount necessary to  
21 satisfy the creditor's claim, whichever is less. The judgment  
22 may be entered against either of the following:

23 a. The first transferee of the asset or the person for  
24 whose benefit the transfer was made.

25 b. Any subsequent transferee other than a good-faith  
26 transferee or obligee who took for value or from any  
27 subsequent transferee or obligee.

28 3. If the judgment under subsection 2 is based upon the  
29 value of the asset transferred, the judgment must be for an  
30 amount equal to the value of the asset at the time of the  
31 transfer, subject to adjustment as the equities may require.

32 4. Notwithstanding voidability of a transfer or an  
33 obligation under this chapter, a good-faith transferee or  
34 obligee is entitled, to the extent of the value given the  
35 debtor for the transfer or obligation, to any of the

1 following:

2 a. A lien on or a right to retain any interest in the  
3 asset transferred.

4 b. Enforcement of any obligation incurred.

5 c. A reduction in the amount of the liability on the  
6 judgment.

7 5. A transfer is not voidable under section 684.4,  
8 subsection 1, paragraph "b", or section 684.5 if the transfer  
9 results from either of the following:

10 a. Termination of a lease upon default by the debtor when  
11 the termination is pursuant to the lease and applicable law.

12 b. Enforcement of a security interest in compliance with  
13 chapter 554, article 9.

14 6. A transfer is not voidable under section 684.5,  
15 subsection 2, in any of the following circumstances:

16 a. To the extent the insider gave new value to or for the  
17 benefit of the debtor after the transfer was made unless the  
18 new value was secured by a valid lien.

19 b. If made in the ordinary course of business or financial  
20 affairs of the debtor and the insider.

21 c. If made pursuant to a good-faith effort to rehabilitate  
22 the debtor and the transfer secured present value given for  
23 that purpose as well as an antecedent debt of the debtor.

24 Sec. 9. NEW SECTION. 684.9 EXTINGUISHMENT OF CAUSE OF  
25 ACTION.

26 A cause of action with respect to a fraudulent transfer or  
27 obligation under this chapter is extinguished unless action is  
28 brought as follows:

29 1. Under section 684.4, subsection 1, paragraph "a",  
30 within five years after the transfer was made or the  
31 obligation was incurred or, if later, within one year after  
32 the transfer or obligation was or could reasonably have been  
33 discovered by the claimant.

34 2. Under section 684.4, subsection 1, paragraph "b", or  
35 section 684.5, subsection 1, within five years after the

1 transfer was made or the obligation was incurred.

2 3. Under section 684.5, subsection 2, within one year  
3 after the transfer was made or the obligation was incurred.

4 Sec. 10. NEW SECTION. 684.11 UNIFORMITY OF APPLICATION  
5 AND CONSTRUCTION.

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

9 Sec. 11. NEW SECTION. 684.12 SHORT TITLE.

10 This chapter may be cited as the "Uniform Fraudulent  
11 Transfer Act."

12

#### EXPLANATION

13 This bill codifies the Uniform Fraudulent Conveyance Act,  
14 promulgated by the conference of commissioners on Uniform  
15 State laws. The Uniform Fraudulent Conveyance Act is a  
16 modernization of the Uniform Fraudulent Conveyance Act that  
17 was also promulgated by the uniform law commissioners, but  
18 which Iowa has not adopted.

19 The bill provides a creditor with the capacity to procure  
20 assets of a debtor, that the debtor has transferred to another  
21 person in order to keep the assets from being used to satisfy  
22 the indebtedness. The bill creates a right of action for a  
23 creditor against a debtor and any other person who has  
24 received property from the debtor in a fraudulent transfer. A  
25 fraudulent transfer occurs when a debtor intends to hinder,  
26 delay, or defraud a creditor, or transfers property under  
27 certain conditions to another person without receiving  
28 reasonably equivalent value in return.

29 The bill distinguishes between present and future  
30 creditors, and specifies the kinds of transfers that are  
31 fraudulent to each of the two categories of creditors. Both  
32 present and future creditors may recover property when there  
33 is a transfer with intent to defraud. Both may recover when a  
34 transfer is made without receiving reasonably equivalent value  
35 when the result is to make the debtor's assets unreasonably

1 small in relation to the business or transaction in which the  
2 debtor is engaged or about to be engaged. Also, present and  
3 future creditors can both recover when a debtor transfers  
4 property without receiving reasonably equivalent value when  
5 intending to incur debts beyond the ability to pay.

6 Present creditors can recover property when it is  
7 transferred by a debtor to another person without receiving  
8 reasonably equivalent value if the debtor is insolvent or  
9 becomes insolvent as a result of the transfer. A transfer to  
10 an "insider" without receiving reasonably equivalent value  
11 when the debtor is insolvent, is also fraudulent to present  
12 creditors. The term "insider" is defined to mean a person  
13 with a special relationship to the debtor. To be liable, an  
14 "insider" must have reasonable cause to believe that the  
15 debtor is insolvent.

16 The fundamental relief for a creditor when there is a  
17 fraudulent transfer is recovery of the property from the  
18 person to whom it has been transferred. The bill allows  
19 avoidance of the transfer or obligation to the extent  
20 necessary to satisfy the creditor's claim. Whatever is  
21 necessary to obtain the property is provided for, including  
22 attachment, injunctive relief, appointment of a receiver, or  
23 any relief the circumstances may require. If the creditor has  
24 reduced the claim to a judgment, the court may levy execution  
25 against the recovered assets. This means that the property  
26 can be sold to satisfy the amount of the judgment.

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(P. 776) 3-21-94 Senate - Judiciary  
(P. 827) 3-24-94 Senate - Do Pass

HOUSE FILE 2384  
BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 666)

(As Amended and Passed by the House March 21, 1994)

Passed House <sup>(P. 1213)</sup> Date 4-8-94 Passed Senate, Date <sup>P. 963</sup> 3/31/94  
Vote: Ayes 97 Nays 0 Vote: Ayes 50 Nays 0  
Approved April 26, 1994

A BILL FOR

1 An Act enacting the uniform fraudulent transfer Act.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

1 Section 1. NEW SECTION. 684.1 DEFINITIONS.

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6 outstanding voting securities of the debtor, other than a  
7 person who holds the securities as either of the following:

8 (1) As a fiduciary or agent without sole discretionary  
9 power to vote the securities.

10 (2) Solely to secure a debt, if the person has not  
11 exercised the power to vote.

12 b. A corporation twenty percent or more of whose  
13 outstanding voting securities are directly or indirectly  
14 owned, controlled, or held with power to vote, by the debtor  
15 or a person who directly or indirectly owns, controls, or  
16 holds with power to vote, twenty percent or more of the  
17 outstanding voting securities of the debtor, other than a  
18 person who holds the securities as either of the following:

19 (1) As a fiduciary or agent without sole power to vote the  
20 securities.

21 (2) Solely to secure a debt, if the person has not in fact  
22 exercised the power to vote.

23 c. A person whose business is operated by the debtor under  
24 a lease or other agreement, or a person substantially all of  
25 whose assets are controlled by the debtor.

26 d. A person who operates the debtor's business under a  
27 lease or other agreement or controls substantially all of the  
28 debtor's assets.

29 2. "Asset" means property of a debtor, but does not  
30 include any of the following:

31 a. Property to the extent it is encumbered by a valid  
32 lien.

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34 nonbankruptcy law.

35 c. An interest in property held in tenancy by the

1 entireties to the extent it is not subject to process by a  
2 creditor holding a claim against only one tenant.

3 3. "Claim" means a right to payment, whether or not the  
4 right is reduced to judgment, liquidated, unliquidated, fixed,  
5 contingent, matured, unmatured, disputed, undisputed, legal,  
6 equitable, secured, or unsecured.

7 4. "Creditor" means a person who has a claim.

8 5. "Debt" means liability on a claim.

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10 7. "Insider" includes all of the following:

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17 subparagraph (2).

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19 officer, or person in control.

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21 (1) A director of the debtor.

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25 partner.

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35 partner.

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4 d. An affiliate, or an insider of an affiliate as if the  
5 affiliate were the debtor.

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5 sum of the partnership's debts is greater than the aggregate,  
6 at a fair valuation, of all of the partnership's assets, and  
7 the sum of the excess of the value of each general partner's  
8 nonpartnership assets over the partner's nonpartnership debts.

9 4. Assets under this section do not include property that  
10 has been transferred, concealed, or removed with intent to  
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4 fraudulent as to a creditor, whether the creditor's claim  
5 arose before or after the transfer was made or the obligation  
6 was incurred, if the debtor made the transfer or incurred the  
7 obligation under any of the following circumstances:

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

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

13     (1) The debtor was engaged or was about to engage in a  
14 business or a transaction for which the remaining assets of  
15 the debtor were unreasonably small in relation to the business  
16 or transaction.

17     (2) The debtor intended to incur, or believed or  
18 reasonably should have believed that the debtor would incur,  
19 debts beyond the debtor's ability to pay as they became due.

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

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

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

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

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

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

32     f. Whether the debtor absconded.

33     g. Whether the debtor removed or concealed assets.

34     h. Whether the value of the consideration received by the  
35 debtor was reasonably equivalent to the value of the asset

1 transferred or the amount of the obligation incurred.

2 i. Whether the debtor was insolvent or became insolvent  
3 shortly after the transfer was made or the obligation was  
4 incurred.

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

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

10 Sec. 5. NEW SECTION. 684.5 TRANSFERS FRAUDULENT AS TO  
11 PRESENT CREDITORS.

12 1. A transfer made or obligation incurred by a debtor is  
13 fraudulent as to a creditor whose claim arose before the  
14 transfer was made or the obligation was incurred if the debtor  
15 made the transfer or incurred the obligation without receiving  
16 a reasonably equivalent value in exchange for the transfer or  
17 obligation and the debtor was insolvent at that time or the  
18 debtor became insolvent as a result of the transfer or  
19 obligation.

20 2. A transfer made by a debtor is fraudulent as to a  
21 creditor whose claim arose before the transfer was made if the  
22 transfer was made to an insider for an antecedent debt, the  
23 debtor was insolvent at that time, and the insider had  
24 reasonable cause to believe that the debtor was insolvent.

25 Sec. 6. NEW SECTION. 684.6 WHEN TRANSFER IS MADE OR  
26 OBLIGATION IS INCURRED.

27 For the purposes of this chapter:

28 1. A transfer is made under either of the following cir-  
29 cumstances:

30 a. With respect to an asset that is real property other  
31 than a fixture, but including the interest of a seller or  
32 purchaser under a contract for the sale of the asset, when the  
33 transfer is so far perfected that a good-faith purchaser of  
34 the asset from the debtor against whom applicable law permits  
35 the transfer to be perfected cannot acquire an interest in the

1 asset that is superior to the interest of the transferee.

2 b. With respect to an asset that is not real property or  
3 that is a fixture, when the transfer is so far perfected that  
4 a creditor on a simple contract cannot acquire a judicial lien  
5 otherwise than under this chapter that is superior to the  
6 interest of the transferee.

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

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

16 4. A transfer is not made until the debtor has acquired  
17 rights in the asset transferred.

18 5. An obligation is incurred under either of the following  
19 circumstances:

20 a. If oral, when it becomes effective between the parties.

21 b. If evidenced by a writing, when the writing executed by  
22 the obligor is delivered to or for the benefit of the obligee.

23 Sec. 7. NEW SECTION. 684.7 REMEDIES OF CREDITORS.

24 1. In an action for relief against a transfer or  
25 obligation under this chapter, a creditor, subject to the  
26 limitations in section 684.8, may obtain any of the following:

27 a. Avoidance of the transfer or obligation to the extent  
28 necessary to satisfy the creditor's claim.

29 b. A remedy by any special action available under this  
30 subtitle, including attachment or other provisional remedy,  
31 against the asset transferred or other property of the  
32 transferee.

33 c. Subject to applicable principles of equity and in  
34 accordance with applicable rules of civil procedure, any of  
35 the following:

1 (1) An injunction against further disposition by the  
2 debtor or a transferee, or both, of the asset transferred or  
3 of other property.

4 (2) Appointment of a receiver to take charge of the asset  
5 transferred or of other property of the transferee.

6 (3) Any other relief the circumstances may require.

7 2. If a creditor has obtained a judgment on a claim  
8 against the debtor, the creditor, if the court so orders, may  
9 levy execution on the asset transferred or its proceeds.

10 Sec. 8. NEW SECTION. 684.8 DEFENSES, LIABILITY, AND  
11 PROTECTION OF TRANSFEREE.

12 1. A transfer or obligation is not voidable under section  
13 684.7, subsection 1, paragraph "a", against a person who took  
14 in good faith and for a reasonably equivalent value or against  
15 any subsequent transferee or obligee.

16 2. Except as otherwise provided in this section, to the  
17 extent a transfer is voidable in an action by a creditor under  
18 section 684.7, subsection 1, paragraph "a", the creditor may  
19 recover judgment for the value of the asset transferred, as  
20 adjusted under subsection 3, or the amount necessary to  
21 satisfy the creditor's claim, whichever is less. The judgment  
22 may be entered against either of the following:

23 a. The first transferee of the asset or the person for  
24 whose benefit the transfer was made.

25 b. Any subsequent transferee other than a good-faith  
26 transferee or obligee who took for value or from any  
27 subsequent transferee or obligee.

28 3. If the judgment under subsection 2 is based upon the  
29 value of the asset transferred, the judgment must be for an  
30 amount equal to the value of the asset at the time of the  
31 transfer, subject to adjustment as the equities may require.

32 4. Notwithstanding voidability of a transfer or an  
33 obligation under this chapter, a good-faith transferee or  
34 obligee is entitled, to the extent of the value given the  
35 debtor for the transfer or obligation, to any of the

1 following:

2 a. A lien on or a right to retain any interest in the  
3 asset transferred.

4 b. Enforcement of any obligation incurred.

5 c. A reduction in the amount of the liability on the  
6 judgment.

7 5. A transfer is not voidable under section 684.4,  
8 subsection 1, paragraph "b", or section 684.5 if the transfer  
9 results from either of the following:

10 a. Termination of a lease upon default by the debtor when  
11 the termination is pursuant to the lease and applicable law.

12 b. Enforcement of a security interest in compliance with  
13 chapter 554, article 9.

14 6. A transfer is not voidable under section 684.5,  
15 subsection 2, in any of the following circumstances:

16 a. To the extent the insider gave new value to or for the  
17 benefit of the debtor after the transfer was made unless the  
18 new value was secured by a valid lien.

19 b. If made in the ordinary course of business or financial  
20 affairs of the debtor and the insider.

21 c. If made pursuant to a good-faith effort to rehabilitate  
22 the debtor and the transfer secured present value given for  
23 that purpose as well as an antecedent debt of the debtor.

24 Sec. 9. NEW SECTION. 684.9 EXTINGUISHMENT OF CAUSE OF  
25 ACTION.

26 A cause of action with respect to a fraudulent transfer or  
27 obligation under this chapter is extinguished unless action is  
28 brought as follows:

29 1. Under section 684.4, subsection 1, paragraph "a",  
30 within five years after the transfer was made or the  
31 obligation was incurred or, if later, within one year after  
32 the transfer or obligation was or could reasonably have been  
33 discovered by the claimant.

34 2. Under section 684.4, subsection 1, paragraph "b", or  
35 section 684.5, subsection 1, within five years after the

1 transfer was made or the obligation was incurred.

2 3. Under section 684.5, subsection 2, within one year  
3 after the transfer was made or the obligation was incurred.

4 Sec. 10. NEW SECTION. 684.10 SUPPLEMENTARY PROVISIONS.

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

11 Sec. 11. NEW SECTION. 684.11 UNIFORMITY OF APPLICATION  
12 AND CONSTRUCTION.

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

16 Sec. 12. NEW SECTION. 684.12 SHORT TITLE.

17 This chapter may be cited as the "Uniform Fraudulent  
18 Transfer Act."

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## HOUSE FILE 2384

S-5316

1 Amend House File 2384, as amended, passed, and  
2 reprinted by the House as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 322D.6, Code 1993, is amended  
6 to read as follows:

7 322D.6 SECURITY INTERESTS NOT AFFECTED.

8 The provisions of this chapter shall not be  
9 construed to affect, in any way, the existence or  
10 enforcement of any security interest which a supplier,  
11 any financial institution or any other person may have  
12 in the inventory of the retailer, ~~and any repurchase~~  
13 ~~of inventory which is made hereunder shall not be~~  
14 ~~subject to the bulk sales provisions of chapter 554,~~  
15 ~~article 6 of the uniform commercial code.~~

16 Sec. \_\_\_\_ . Section 322F.4, Code 1993, is amended to  
17 read as follows:

18 322F.4 SECURITY INTERESTS NOT AFFECTED.

19 This chapter shall not be construed to affect the  
20 existence or enforcement of a security interest which  
21 any person, including a supplier or financial  
22 institution, may have in the inventory of the dealer.

23 ~~The repurchase of inventory which is made under this~~  
24 ~~chapter shall not be subject to the bulk sales~~  
25 ~~provision of chapter 554, article 6 of the uniform~~  
26 ~~commercial code.~~

27 Sec. \_\_\_\_ . Section 554.1105, subsection 2, Code  
28 1993, is amended to read as follows:

29 2. Where one of the following provisions of this  
30 chapter specifies the applicable law, that provision  
31 governs and a contrary agreement is effective only to  
32 the extent permitted by the law (including the  
33 conflict of laws rules) so specified:

34 Rights of creditors against sold goods. Section  
35 554.2402.

36 Applicability of the Article on Bank Deposits and  
37 Collections. Section 554.4102.

38 ~~Bulk transfers subject to the Article on Bulk~~  
39 ~~Transfers. Section 554.6102.~~

40 Applicability of the Article on Investment  
41 Securities. Section 554.8106.

42 Perfection provisions of the Article on Secured  
43 Transactions. Section 554.9103.

44 Governing law in the Article on Funds Transfers.  
45 Section 554.12507.

46 Sec. \_\_\_\_ . Section 554.2403, subsection 4, Code  
47 1993, is amended to read as follows:

48 4. The rights of other purchasers of goods and of  
49 lien creditors are governed by the Articles on Secured  
50 Transactions (Article 9), ~~Bulk Transfers (Article 6)~~

S-5316

-1-

WITHDRAWN



S-5316

Page 2

- 1 and Documents of Title (Article 7)."
- 2 2. Page 3, by striking lines 13 through 16.
- 3 3. Page 10, by inserting after line 18 the
- 4 following:
- 5 "Sec. \_\_\_\_\_. REPEALS. Sections 554.6101 through
- 6 554.6111, and 554.9111, Code 1993, are repealed.
- 7 Sec. \_\_\_\_\_. EFFECTIVE DATE AND APPLICATION. This
- 8 Act takes effect on January 1, 1995, and applies to
- 9 all causes of action accruing on or after that date."
- 10 4. Title page, line 1, by inserting after the
- 11 word "Act" the following: "relating to commercial
- 12 transactions, by".
- 13 5. Title page, line 1, by inserting after the
- 14 words "transfer Act" the following: ", and providing
- 15 for the repeal of certain Code sections, and providing
- 16 an effective and applicability date".
- 17 6. By renumbering as necessary.

By RANDAL J. GIANNETTO

S-5316 FILED MARCH 28, 1994

WITHDRAWN

3-31-94

(p. 963)

## HOUSE FILE 2384

S-5395

1 Amend House File 2384, as amended, passed, and  
2 reprinted by the House as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 322D.6, Code 1993, is amended  
6 to read as follows:

7 322D.6 SECURITY INTERESTS NOT AFFECTED.

8 The provisions of this chapter shall not be  
9 construed to affect, in any way, the existence or  
10 enforcement of any security interest which a supplier,  
11 any financial institution or any other person may have  
12 in the inventory of the retailer, ~~and any repurchase~~  
13 ~~of inventory which is made hereunder shall not be~~  
14 ~~subject to the bulk sales provisions of chapter 554,~~  
15 ~~article 6, of the uniform commercial code.~~

16 Sec. \_\_\_\_ . Section 322F.4, Code 1993, is amended to  
17 read as follows:

18 322F.4 SECURITY INTERESTS NOT AFFECTED.

19 This chapter shall not be construed to affect the  
20 existence or enforcement of a security interest which  
21 any person, including a supplier or financial  
22 institution, may have in the inventory of the dealer.  
23 ~~The repurchase of inventory which is made under this~~  
24 ~~chapter shall not be subject to the bulk sales~~  
25 ~~provision of chapter 554, article 6 of the uniform~~  
26 ~~commercial code.~~

27 Sec. \_\_\_\_ . Section 554.1105, subsection 2, Code  
28 1993, is amended to read as follows:

29 2. Where one of the following provisions of this  
30 chapter specifies the applicable law, that provision  
31 governs and a contrary agreement is effective only to  
32 the extent permitted by the law (including the  
33 conflict of laws rules) so specified:

34 Rights of creditors against sold goods. Section  
35 554.2402.

36 Applicability of the Article on Bank Deposits and  
37 Collections. Section 554.4102.

38 ~~Bulk transfers subject to the Article on Bulk~~  
39 ~~Transfers:--Section 554.6102.~~

40 Applicability of the Article on Investment  
41 Securities. Section 554.8106.

42 Perfection provisions of the Article on Secured  
43 Transactions. Section 554.9103.

44 Governing law in the Article on Funds Transfers.  
45 Section 554.12507.

46 Sec. \_\_\_\_ . Section 554.2403, subsection 4, Code  
47 1993, is amended to read as follows:

48 4. The rights of other purchasers of goods and of  
49 lien creditors are governed by the Articles on Secured  
50 Transactions (Article 9), ~~Bulk Transfers (Article 6)~~

S-5395

-1-

S-5395

Page 2

- 1 and Documents of Title (Article 7)."
- 2 2. Page 3, by striking lines 13 through 16.
- 3 3. Page 10, by inserting after line 18 the
- 4 following:
- 5 "Sec. \_\_\_\_\_. REPEALS. Sections 554.6101 through
- 6 554.6111, and 554.9111, Code 1993, are repealed.
- 7 Sec. \_\_\_\_\_. EFFECTIVE DATE AND APPLICATION. This
- 8 Act takes effect on January 1, 1995, and applies to
- 9 all causes of action arising on or after that date."
- 10 4. Title page, line 1, by inserting after the
- 11 word "Act" the following: "relating to commercial
- 12 transactions, by".
- 13 5. Title page, line 1, by inserting after the
- 14 words "transfer Act" the following: ", and providing
- 15 for the repeal of certain Code sections, and providing
- 16 an effective and applicability date".
- 17 6. By renumbering as necessary.

By RANDAL. J. GIANNETTO

S-5395 FILED MARCH 31, 1994  
ADOPTED

## SENATE AMENDMENT TO HOUSE FILE 2384

H-5927

1 Amend House File 2384, as amended, passed, and  
2 reprinted by the House as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 322D.6, Code 1993, is amended  
6 to read as follows:

7 322D.6 SECURITY INTERESTS NOT AFFECTED.

8 The provisions of this chapter shall not be  
9 construed to affect, in any way, the existence or  
10 enforcement of any security interest which a supplier,  
11 any financial institution or any other person may have  
12 in the inventory of the retailer; ~~and any repurchase~~  
13 ~~of inventory which is made hereunder shall not be~~  
14 ~~subject to the bulk sales provisions of chapter 554,~~  
15 ~~article 6, of the uniform commercial code.~~

16 Sec. \_\_\_\_ . Section 322F.4, Code 1993, is amended to  
17 read as follows:

18 322F.4 SECURITY INTERESTS NOT AFFECTED.

19 This chapter shall not be construed to affect the  
20 existence or enforcement of a security interest which  
21 any person, including a supplier or financial  
22 institution, may have in the inventory of the dealer.  
23 ~~The repurchase of inventory which is made under this~~  
24 ~~chapter shall not be subject to the bulk sales~~  
25 ~~provision of chapter 554, article 6 of the uniform~~  
26 ~~commercial code.~~

27 Sec. \_\_\_\_ . Section 554.1105, subsection 2, Code  
28 1993, is amended to read as follows:

29 2. Where one of the following provisions of this  
30 chapter specifies the applicable law, that provision  
31 governs and a contrary agreement is effective only to  
32 the extent permitted by the law (including the  
33 conflict of laws rules) so specified:

34 Rights of creditors against sold goods. Section  
35 554.2402.

36 Applicability of the Article on Bank Deposits and  
37 Collections. Section 554.4102.

38 ~~Bulk transfers subject to the Article on Bulk~~  
39 ~~Transfers. Section 554.6102.~~

40 Applicability of the Article on Investment  
41 Securities. Section 554.8106.

42 Perfection provisions of the Article on Secured  
43 Transactions. Section 554.9103.

44 Governing law in the Article on Funds Transfers.  
45 Section 554.12507.

46 Sec. \_\_\_\_ . Section 554.2403, subsection 4, Code  
47 1993, is amended to read as follows:

48 4. The rights of other purchasers of goods and of  
49 lien creditors are governed by the Articles on Secured  
50 Transactions (Article 9), ~~Bulk Transfers (Article 6)~~

H-5927

-1-

H-5927

Page 2

1 and Documents of Title (Article 7)."

2 2. Page 3, by striking lines 13 through 16.

3 3. Page 10, by inserting after line 18 the

4 following:

5 "Sec. \_\_\_\_\_. REPEALS. Sections 554.6101 through  
6 554.6111, and 554.9111, Code 1993, are repealed.

7 Sec. \_\_\_\_\_. EFFECTIVE DATE AND APPLICATION. This  
8 Act takes effect on January 1, 1995, and applies to  
9 all causes of action arising on or after that date."

10 4. Title page, line 1, by inserting after the  
11 word "Act" the following: "relating to commercial  
12 transactions, by".

13 5. Title page, line 1, by inserting after the  
14 words "transfer Act" the following: ", and providing  
15 for the repeal of certain Code sections, and providing  
16 an effective and applicability date".

17 6. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-5927 FILED APRIL 4, 1994

*House Concurred 4-8-94*  
*P.1313*

Millage  
Dunkle  
McKinney

HSB 666

Judiciary & Law Enforcement

HOUSE FILE 2384  
BY (PROPOSED COMMITTEE ON  
JUDICIARY AND LAW  
ENFORCEMENT BILL BY  
CHAIRPERSON McNEAL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act enacting the uniform fraudulent transfer Act.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 684.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Affiliate" means any of the following:

4 a. A person who directly or indirectly owns, controls, or  
5 holds with power to vote, twenty percent or more of the  
6 outstanding voting securities of the debtor, other than a  
7 person who holds the securities as either of the following:

8 (1) As a fiduciary or agent without sole discretionary  
9 power to vote the securities.

10 (2) Solely to secure a debt, if the person has not  
11 exercised the power to vote.

12 b. A corporation twenty percent or more of whose  
13 outstanding voting securities are directly or indirectly  
14 owned, controlled, or held with power to vote, by the debtor  
15 or a person who directly or indirectly owns, controls, or  
16 holds with power to vote, twenty percent or more of the  
17 outstanding voting securities of the debtor, other than a  
18 person who holds the securities as either of the following:

19 (1) As a fiduciary or agent without sole power to vote the  
20 securities.

21 (2) Solely to secure a debt, if the person has not in fact  
22 exercised the power to vote.

23 c. A person whose business is operated by the debtor under  
24 a lease or other agreement, or a person substantially all of  
25 whose assets are controlled by the debtor.

26 d. A person who operates the debtor's business under a  
27 lease or other agreement or controls substantially all of the  
28 debtor's assets.

29 2. "Asset" means property of a debtor, but does not  
30 include any of the following:

31 a. Property to the extent it is encumbered by a valid  
32 lien.

33 b. Property to the extent it is generally exempt under  
34 nonbankruptcy law.

35 c. An interest in property held in tenancy by the

1 entireties to the extent it is not subject to process by a  
2 creditor holding a claim against only one tenant.

3 3. "Claim" means a right to payment, whether or not the  
4 right is reduced to judgment, liquidated, unliquidated, fixed,  
5 contingent, matured, unmatured, disputed, undisputed, legal,  
6 equitable, secured, or unsecured.

7 4. "Creditor" means a person who has a claim.

8 5. "Debt" means liability on a claim.

9 6. "Debtor" means a person who is liable on a claim.

10 7. "Insider" includes all of the following:

11 a. If the debtor is an individual, all of the following:

12 (1) A relative of the debtor or of a general partner of  
13 the debtor.

14 (2) A partnership in which the debtor is a general  
15 partner.

16 (3) A general partner in a partnership described in  
17 subparagraph (2).

18 (4) A corporation of which the debtor is a director,  
19 officer, or person in control.

20 b. If the debtor is a corporation, all of the following:

21 (1) A director of the debtor.

22 (2) An officer of the debtor.

23 (3) A person in control of the debtor.

24 (4) A partnership in which the debtor is a general  
25 partner.

26 (5) A general partner in a partnership described in  
27 subparagraph (4).

28 (6) A relative of a general partner, director, officer, or  
29 person in control of the debtor.

30 c. If the debtor is a partnership, all of the following:

31 (1) A general partner in the debtor.

32 (2) A relative of a general partner in, or a general  
33 partner of, or a person in control of the debtor.

34 (3) Another partnership in which the debtor is a general  
35 partner.



1 (4) A general partner in a partnership described in  
2 subparagraph (3).

3 (5) A person in control of the debtor.

4 d. An affiliate, or an insider of an affiliate as if the  
5 affiliate were the debtor.

6 e. A managing agent of the debtor.

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

13 9. "Person" means an individual, partnership, corporation,  
14 association, organization, government or governmental  
15 subdivision or agency, business trust, estate, trust, or any  
16 other legal or commercial entity.

17 10. "Property" means anything that may be the subject of  
18 ownership.

19 11. "Relative" means an individual related by  
20 consanguinity within the third degree as determined by the  
21 common law, a spouse, or an individual related to a spouse  
22 within the third degree as so determined, and includes an  
23 individual in an adoptive relationship within the third  
24 degree.

25 12. "Transfer" means every mode, direct or indirect,  
26 absolute or conditional, voluntary or involuntary, of  
27 disposing of or parting with an asset or an interest in an  
28 asset, and includes payment of money, release, lease, and  
29 creation of a lien or other encumbrance.

30 13. "Valid lien" means a lien that is effective against  
31 the holder of a judicial lien subsequently obtained by legal  
32 or equitable process or proceedings.

33 Sec. 2. NEW SECTION. 684.2 INSOLVENCY.

34 1. A debtor is insolvent if the sum of the debtor's debts  
35 is greater than all of the debtor's assets, at a fair

1 valuation.

2 2. A debtor who is generally not paying the debtor's debts  
3 as they become due is presumed to be insolvent.

4 3. A partnership is insolvent under subsection 1 if the  
5 sum of the partnership's debts is greater than the aggregate,  
6 at a fair valuation, of all of the partnership's assets, and  
7 the sum of the excess of the value of each general partner's  
8 nonpartnership assets over the partner's nonpartnership debts.

9 4. Assets under this section do not include property that  
10 has been transferred, concealed, or removed with intent to  
11 hinder, delay, or defraud creditors or that has been  
12 transferred in a manner making the transfer voidable under  
13 this chapter.

14 5. Debts under this section do not include an obligation  
15 to the extent it is secured by a valid lien on property of the  
16 debtor not included as an asset.

17 Sec. 3. NEW SECTION. 684.3 VALUE.

18 1. Value is given for a transfer or an obligation if, in  
19 exchange for the transfer or obligation, property is  
20 transferred or an antecedent debt is secured or satisfied, but  
21 value does not include an unperformed promise made otherwise  
22 than in the ordinary course of the promisor's business to  
23 furnish support to the debtor or another person.

24 2. For the purposes of section 684.4, subsection 1,  
25 paragraph "b", and section 684.5, a person gives a reasonably  
26 equivalent value if the person acquires an interest of the  
27 debtor in an asset pursuant to a regularly conducted,  
28 noncollusive foreclosure sale or execution of a power of sale  
29 for the acquisition or disposition of the interest of the  
30 debtor upon default under a mortgage, deed of trust, or  
31 security agreement.

32 3. A transfer is made for present value if the exchange  
33 between the debtor and the transferee is intended by them to  
34 be contemporaneous and is in fact substantially  
35 contemporaneous.

1     Sec. 4. NEW SECTION. 684.4 TRANSFERS FRAUDULENT AS TO  
2 PRESENT AND FUTURE CREDITORS.

3     1. A transfer made or obligation incurred by a debtor is  
4 fraudulent as to a creditor, whether the creditor's claim  
5 arose before or after the transfer was made or the obligation  
6 was incurred, if the debtor made the transfer or incurred the  
7 obligation under any of the following circumstances:

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

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

13     (1) The debtor was engaged or was about to engage in a  
14 business or a transaction for which the remaining assets of  
15 the debtor were unreasonably small in relation to the business  
16 or transaction.

17     (2) The debtor intended to incur, or believed or  
18 reasonably should have believed that the debtor would incur,  
19 debts beyond the debtor's ability to pay as they became due.

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

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

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

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

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

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

32     f. Whether the debtor absconded.

33     g. Whether the debtor removed or concealed assets.

34     h. Whether the value of the consideration received by the  
35 debtor was reasonably equivalent to the value of the asset

1 transferred or the amount of the obligation incurred.

2 i. Whether the debtor was insolvent or became insolvent  
3 shortly after the transfer was made or the obligation was  
4 incurred.

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

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

10 Sec. 5. NEW SECTION. 684.5 TRANSFERS FRAUDULENT AS TO  
11 PRESENT CREDITORS.

12 1. A transfer made or obligation incurred by a debtor is  
13 fraudulent as to a creditor whose claim arose before the  
14 transfer was made or the obligation was incurred if the debtor  
15 made the transfer or incurred the obligation without receiving  
16 a reasonably equivalent value in exchange for the transfer or  
17 obligation and the debtor was insolvent at that time or the  
18 debtor became insolvent as a result of the transfer or  
19 obligation.

20 2. A transfer made by a debtor is fraudulent as to a  
21 creditor whose claim arose before the transfer was made if the  
22 transfer was made to an insider for an antecedent debt, the  
23 debtor was insolvent at that time, and the insider had  
24 reasonable cause to believe that the debtor was insolvent.

25 Sec. 6. NEW SECTION. 684.6 WHEN TRANSFER IS MADE OR  
26 OBLIGATION IS INCURRED.

27 For the purposes of this chapter:

28 1. A transfer is made under either of the following cir-  
29 cumstances:

30 a. With respect to an asset that is real property other  
31 than a fixture, but including the interest of a seller or  
32 purchaser under a contract for the sale of the asset, when the  
33 transfer is so far perfected that a good-faith purchaser of  
34 the asset from the debtor against whom applicable law permits  
35 the transfer to be perfected cannot acquire an interest in the

1 asset that is superior to the interest of the transferee.

2 b. With respect to an asset that is not real property or  
3 that is a fixture, when the transfer is so far perfected that  
4 a creditor on a simple contract cannot acquire a judicial lien  
5 otherwise than under this chapter that is superior to the  
6 interest of the transferee.

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

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

16 4. A transfer is not made until the debtor has acquired  
17 rights in the asset transferred.

18 5. An obligation is incurred under either of the following  
19 circumstances:

20 a. If oral, when it becomes effective between the parties.

21 b. If evidenced by a writing, when the writing executed by  
22 the obligor is delivered to or for the benefit of the obligee.

23 Sec. 7. NEW SECTION. 684.7 REMEDIES OF CREDITORS.

24 1. In an action for relief against a transfer or  
25 obligation under this chapter, a creditor, subject to the  
26 limitations in section 684.8, may obtain any of the following:

27 a. Avoidance of the transfer or obligation to the extent  
28 necessary to satisfy the creditor's claim.

29 b. A remedy by any special action available under this  
30 subtitle, including attachment or other provisional remedy,  
31 against the asset transferred or other property of the  
32 transferee.

33 c. Subject to applicable principles of equity and in  
34 accordance with applicable rules of civil procedure, any of  
35 the following:

1 (1) An injunction against further disposition by the  
2 debtor or a transferee, or both, of the asset transferred or  
3 of other property.

4 (2) Appointment of a receiver to take charge of the asset  
5 transferred or of other property of the transferee.

6 (3) Any other relief the circumstances may require.

7 2. If a creditor has obtained a judgment on a claim  
8 against the debtor, the creditor, if the court so orders, may  
9 levy execution on the asset transferred or its proceeds.

10 Sec. 8. NEW SECTION. 684.8 DEFENSES, LIABILITY, AND  
11 PROTECTION OF TRANSFEREE.

12 1. A transfer or obligation is not voidable under section  
13 684.8, subsection 1, paragraph "a", against a person who took  
14 in good faith and for a reasonably equivalent value or against  
15 any subsequent transferee or obligee.

16 2. Except as otherwise provided in this section, to the  
17 extent a transfer is voidable in an action by a creditor under  
18 section 684.7, subsection 1, paragraph "a", the creditor may  
19 recover judgment for the value of the asset transferred, as  
20 adjusted under subsection 3, or the amount necessary to  
21 satisfy the creditor's claim, whichever is less. The judgment  
22 may be entered against either of the following:

23 a. The first transferee of the asset or the person for  
24 whose benefit the transfer was made.

25 b. Any subsequent transferee other than a good-faith  
26 transferee or obligee who took for value or from any  
27 subsequent transferee or obligee.

28 3. If the judgment under subsection 2 is based upon the  
29 value of the asset transferred, the judgment must be for an  
30 amount equal to the value of the asset at the time of the  
31 transfer, subject to adjustment as the equities may require.

32 4. Notwithstanding voidability of a transfer or an  
33 obligation under this chapter, a good-faith transferee or  
34 obligee is entitled, to the extent of the value given the  
35 debtor for the transfer or obligation, to any of the

1 following:

2 a. A lien on or a right to retain any interest in the  
3 asset transferred.

4 b. Enforcement of any obligation incurred.

5 c. A reduction in the amount of the liability on the  
6 judgment.

7 5. A transfer is not voidable under section 684.4,  
8 subsection 1, paragraph "b", or section 684.5 if the transfer  
9 results from either of the following:

10 a. Termination of a lease upon default by the debtor when  
11 the termination is pursuant to the lease and applicable law.

12 b. Enforcement of a security interest in compliance with  
13 chapter 554, article 9.

14 6. A transfer is not voidable under section 684.5,  
15 subsection 2, in any of the following circumstances:

16 a. To the extent the insider gave new value to or for the  
17 benefit of the debtor after the transfer was made unless the  
18 new value was secured by a valid lien.

19 b. If made in the ordinary course of business or financial  
20 affairs of the debtor and the insider.

21 c. If made pursuant to a good-faith effort to rehabilitate  
22 the debtor and the transfer secured present value given for  
23 that purpose as well as an antecedent debt of the debtor.

24 Sec. 9. NEW SECTION. 684.9 EXTINGUISHMENT OF CAUSE OF  
25 ACTION.

26 A cause of action with respect to a fraudulent transfer or  
27 obligation under this chapter is extinguished unless action is  
28 brought as follows:

29 1. Under section 684.4, subsection 1, paragraph "a",  
30 within four years after the transfer was made or the  
31 obligation was incurred or, if later, within one year after  
32 the transfer or obligation was or could reasonably have been  
33 discovered by the claimant.

34 2. Under section 684.4, subsection 1, paragraph "b", or  
35 section 684.5, subsection 1, within four years after the

1 transfer was made or the obligation was incurred.

2 3. Under section 684.5, subsection 2, within one year  
3 after the transfer was made or the obligation was incurred.

4 Sec. 11. NEW SECTION. 684.11 UNIFORMITY OF APPLICATION  
5 AND CONSTRUCTION.

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

9 Sec. 12. NEW SECTION. 684.12 SHORT TITLE.

10 This chapter may be cited as the "Uniform Fraudulent  
11 Transfer Act."

12 EXPLANATION

13 This bill codifies the Uniform Fraudulent Conveyance Act,  
14 promulgated by the conference of commissioners on Uniform  
15 State laws. The Uniform Fraudulent Conveyance Act is a  
16 modernization of the Uniform Fraudulent Conveyance Act that  
17 was also promulgated by the uniform law commissioners, but  
18 which Iowa has not adopted.

19 The bill provides a creditor with the capacity to procure  
20 assets of a debtor, that the debtor has transferred to another  
21 person in order to keep the assets from being used to satisfy  
22 the indebtedness. The bill creates a right of action for a  
23 creditor against a debtor and any other person who has  
24 received property from the debtor in a fraudulent transfer. A  
25 fraudulent transfer occurs when a debtor intends to hinder,  
26 delay, or defraud a creditor, or transfers property under  
27 certain conditions to another person without receiving  
28 reasonably equivalent value in return.

29 The bill distinguishes between present and future  
30 creditors, and specifies the kinds of transfers that are  
31 fraudulent to each of the two categories of creditors. Both  
32 present and future creditors may recover property when there  
33 is a transfer with intent to defraud. Both may recover when a  
34 transfer is made without receiving reasonably equivalent value  
35 when the result is to make the debtor's assets unreasonably



1 small in relation to the business or transaction in which the  
2 debtor is engaged or about to be engaged. Also, present and  
3 future creditors can both recover when a debtor transfers  
4 property without receiving reasonably equivalent value when  
5 intending to incur debts beyond the ability to pay.

6 Present creditors can recover property when it is  
7 transferred by a debtor to another person without receiving  
8 reasonably equivalent value if the debtor is insolvent or  
9 becomes insolvent as a result of the transfer. A transfer to  
10 an "insider" without receiving reasonably equivalent value  
11 when the debtor is insolvent, is also fraudulent to present  
12 creditors. The term "insider" is defined to mean a person  
13 with a special relationship to the debtor. To be liable, an  
14 "insider" must have reasonable cause to believe that the  
15 debtor is insolvent.

16 The fundamental relief for a creditor when there is a  
17 fraudulent transfer is recovery of the property from the  
18 person to whom it has been transferred. The bill allows  
19 avoidance of the transfer or obligation to the extent  
20 necessary to satisfy the creditor's claim. Whatever is  
21 necessary to obtain the property is provided for, including  
22 attachment, injunctive relief, appointment of a receiver, or  
23 any relief the circumstances may require. If the creditor has  
24 reduced the claim to a judgment, the court may levy execution  
25 against the recovered assets. This means that the property  
26 can be sold to satisfy the amount of the judgment.

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HOUSE FILE 2384

AN ACT  
RELATING TO COMMERCIAL TRANSACTIONS, BY ENACTING THE UNIFORM  
FRAUDULENT TRANSFER ACT, AND PROVIDING FOR THE REPEAL OF  
CERTAIN CODE SECTIONS, AND PROVIDING AN EFFECTIVE AND AP-  
PLICABILITY DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA

Section 1. Section 322D.6, Code 1993, is amended to read  
as follows:

322D.6 SECURITY INTERESTS NOT AFFECTED.

The provisions of this chapter shall not be construed to  
affect, in any way, the existence or enforcement of any  
security interest which a supplier, any financial institution  
or any other person may have in the inventory of the retailer  
~~and any repurchase of inventory which is made hereunder shall  
not be subject to the bank sales provisions of chapter 554,  
article 6, of the uniform commercial code.~~

Sec. 2. Section 322F.4, Code 1993, is amended to read as  
follows:

322F.4 SECURITY INTERESTS NOT AFFECTED.

This chapter shall not be construed to affect the existence  
or enforcement of a security interest which any person,  
including a supplier or financial institution, may have in the  
inventory of the dealer. ~~The repurchase of inventory which is  
made under this chapter shall not be subject to the bank sales  
provision of chapter 554, article 6 of the uniform commercial  
code.~~

Sec. 3. Section 554.1105, subsection 2, Code 1993, is  
amended to read as follows:

2. Where one of the following provisions of this chapter  
specifies the applicable law, that provision governs and a  
contrary agreement is effective only to the extent permitted

by the law (including the conflict of laws rules) so  
specified:

Rights of creditors against sold goods. Section 554.2402.

Applicability of the Article on Bank Deposits and  
Collections. Section 554.4102.

~~Bank transfers subject to the Article on Bank Transfers -  
Section 554.6102 -~~

Applicability of the Article on Investment Securities.  
Section 554.8106.

Perfection provisions of the Article on Secured  
Transactions. Section 554.9103.

Governing law in the Article on Funds Transfers. Section  
554.12507.

Sec. 4. Section 554.2403, subsection 4, Code 1993, is  
amended to read as follows:

4. The rights of other purchasers of goods and of lien  
creditors are governed by the Articles on Secured Transactions  
(Article 9), ~~Bank Transfers (Article 6)~~ and Documents of Title  
(Article 7).

Sec. 5. NEW SECTION. 684.1 DEFINITIONS.

As used in this chapter:

1. "Affiliate" means any of the following:

a. A person who directly or indirectly owns, controls, or  
holds with power to vote, twenty percent or more of the  
outstanding voting securities of the debtor, other than a  
person who holds the securities as either of the following:

(1) As a fiduciary or agent without sole discretionary  
power to vote the securities.

(2) Solely to secure a debt, if the person has not  
exercised the power to vote.

b. A corporation twenty percent or more of whose  
outstanding voting securities are directly or indirectly  
owned, controlled, or held with power to vote, by the debtor  
or a person who directly or indirectly owns, controls, or  
holds with power to vote, twenty percent or more of the

outstanding voting securities of the debtor, other than a person who holds the securities as either of the following:

(1) As a fiduciary or agent without sole power to vote the securities.

(2) Solely to secure a debt, if the person has not in fact exercised the power to vote.

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor.

d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

2. "Asset" means property of a debtor, but does not include any of the following:

a. Property to the extent it is encumbered by a valid lien.

b. Property to the extent it is generally exempt under nonbankruptcy law.

c. An interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.

3. "Claim" means 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.

4. "Creditor" means a person who has a claim.

5. "Debt" means liability on a claim.

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

7. "Insider" includes all of the following:

a. If the debtor is an individual, all of the following:  
(1) A relative of the debtor or of a general partner of the debtor.

(2) A partnership in which the debtor is a general partner.

(3) A general partner in a partnership described in subparagraph (2).

(4) A corporation of which the debtor is a director, officer, or person in control.

b. If the debtor is a corporation, all of the following:

(1) A director of the debtor.

(2) An officer of the debtor.

(3) A person in control of the debtor.

(4) A partnership in which the debtor is a general partner.

(5) A general partner in a partnership described in subparagraph (4).

(6) A relative of a general partner, director, officer, or person in control of the debtor.

c. If the debtor is a partnership, all of the following:

(1) A general partner in the debtor.

(2) A relative of a general partner in, or a general partner of, or a person in control of the debtor.

(3) Another partnership in which the debtor is a general partner.

(4) A general partner in a partnership described in subparagraph (3).

(5) A person in control of the debtor.

d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

e. A managing agent of the debtor.

8. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and 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.

9. "Property" means anything that may be the subject of ownership.

10. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

11. "Transfer" means 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, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

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

Sec. 6. NEW SECTION. 684.2 INSOLVENCY.

1. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

2. A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

3. A partnership is insolvent under subsection 1 if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, 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.

4. 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 voidable under this chapter.

5. 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.

Sec. 7. NEW SECTION. 684.3 VALUE.

1. 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.

2. For the purposes of section 684.4, subsection 1, paragraph "b", and section 684.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution 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.

3. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Sec. 8. NEW SECTION. 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.

Sec. 9. NEW SECTION. 684.5 TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS.

1. A transfer made or obligation incurred by a debtor is fraudulent 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.

2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Sec. 10. NEW SECTION. 684.6 WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED.

For the purposes of this chapter:

1. A transfer is made under either of the following circumstances:
  - 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.
  - 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 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 subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.
3. If applicable law does not permit the transfer to be perfected as provided in subsection 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 under either of the following circumstances:

- a. If oral, when it becomes effective between the parties.
- b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Sec. 11. NEW SECTION. 684.7 REMEDIES OF CREDITORS.

1. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in section 684.8, may obtain any of the following:

- a. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.
- b. A remedy by any special action available under this subtitle, including attachment or other provisional remedy, against the asset transferred or other property of the transferee.
- c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:
  - (1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property.
  - (2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee.
  - (3) Any other relief the circumstances may require.

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

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

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

Sec. 12. NEW SECTION. 684.8 DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREE.

1. A transfer or obligation is not voidable under section 684.7, subsection 1, paragraph "a", against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

2. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 684.7, subsection 1, paragraph "a", the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against either of the following:

- a. The first transferee of the asset or the person for whose benefit the transfer was made.
  - b. Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.
3. If the judgment under subsection 2 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.

4. 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 any of the following:

- a. A lien on or a right to retain any interest in the asset transferred.
- b. Enforcement of any obligation incurred.
- c. A reduction in the amount of the liability on the judgment.

5. A transfer is not voidable under section 684.7, subsection 1, paragraph "b", or section 684.5 if the transfer results from either of the following:

- a. Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.
- b. Enforcement of a security interest in compliance with chapter 554, article 9.

6. A transfer is not voidable under section 684.7, subsection 2, in any of the following circumstances:

a. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien.

b. If made in the ordinary course of business or financial affairs of the debtor and the insider.

c. If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Sec. 13. NEW SECTION. 684.9 EXTINGUISHMENT OF CAUSE OF ACTION.

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought as follows:

1. Under section 684.4, subsection 1, paragraph "a", within five years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

2. Under section 684.4, subsection 1, paragraph "b", or section 684.5, subsection 1, within five years after the transfer was made or the obligation was incurred.

3. Under section 684.5, subsection 2, within one year after the transfer was made or the obligation was incurred.

Sec. 14. NEW SECTION. 684.10 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.

Sec. 15. NEW SECTION. 684.11 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.

Sec. 16. NEW SECTION. 684.12 SHORT TITLE.

This chapter may be cited as the "Uniform Fraudulent Transfer Act."

Sec. 17. REPEALS. Sections 554.6101 through 554.6111, and 554.9111, Code 1993, are repealed.

Sec. 18. EFFECTIVE DATE AND APPLICATION. This Act takes effect on January 1, 1995, and applies to all causes of action arising on or after that date.

\_\_\_\_\_  
HAROLD VAN MAREN  
Speaker of the House

\_\_\_\_\_  
LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2384, Seventy-fifth General Assembly.

\_\_\_\_\_  
ELIZABETH ISAACSON  
Chief Clerk of the House

Approved *April 26* 1994

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TERRY E. BRANSTAD  
Governor