

**CHAPTER 1040**  
VOIDABLE COMMERCIAL TRANSACTIONS  
H.F. 2400

AN ACT providing for voidable commercial transactions and including applicability provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 684.1, Code 2016, is amended to read as follows:

**684.1 Definitions.**

As used in [this chapter](#):

1. “Affiliate” means any of the following:

a. A person ~~who~~ that 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~~ that 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 in fact 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~~ that 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~~ that 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 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~~ that 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 entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

3. “Claim”, except as used in “claim for relief”, 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~~ that has a claim.

5. “Debt” means liability on a claim.

6. “Debtor” means a person ~~who~~ that is liable on a claim.

7. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

8. “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. 9. “*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.

10. “*Organization*” means a person other than an individual.

11. “*Person*” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

9. 12. “*Property*” means anything that may be the subject of ownership.

13. “*Record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

10. 14. “*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.

15. “*Sign*” means, with present intent to authenticate or adopt a record to do either of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

11. 16. “*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, license, and creation of a lien or other encumbrance.

12. 17. “*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. 2. Section 684.2, Code 2016, is amended to read as follows:

#### **684.2 Insolvency.**

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

2. 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. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

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. 3. 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. 4. 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. 3. Section 684.4, Code 2016, is amended to read as follows:

#### **684.4 Transfers fraudulent Transfer or obligation voidable as to present and or future creditors creditor.**

1. 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 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 whether any or all of the following apply:

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

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

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

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

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

f. ~~Whether the~~ The debtor absconded.

g. ~~Whether the~~ The debtor removed or concealed assets.

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

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

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

3. A creditor making a claim for relief under [subsection 1](#) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Sec. 4. Section 684.5, Code 2016, is amended to read as follows:

**684.5 ~~Transfers fraudulent~~ Transfer or obligation voidable as to present creditors creditor.**

1. 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.

2. A transfer made by a debtor is ~~fraudulent voidable~~ 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.

3. Subject to [section 684.2, subsection 2](#), a creditor making a claim for relief under [subsection 1](#) or [2](#) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Sec. 5. Section 684.6, subsection 1, paragraph a, Code 2016, is amended to read as follows:

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~~ 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.

Sec. 6. Section 684.6, subsection 5, paragraph b, Code 2016, is amended to read as follows:

b. 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.

Sec. 7. Section 684.7, subsection 1, paragraph b, Code 2016, is amended to read as follows:

b. A remedy by any special action available under this subtitle, including An attachment or other provisional remedy, against the asset transferred or other property of the transferee if available under applicable law.

Sec. 8. Section 684.8, Code 2016, is amended to read as follows:

**684.8 Defenses, liability, and protection of transferee or obligee.**

1. A transfer or obligation is not voidable under section 684.7, 684.4, subsection 1, paragraph "a", 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.

2. To the extent a transfer is avoidable in an action by a creditor under section 684.7, subsection 1, paragraph "a", all of the following apply:

a. 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:

α. (1) The first transferee of the asset or the person for whose benefit the transfer was made.

b. (2) Any subsequent transferee An immediate or mediate transferee of the first transferee, other than a any of the following:

(a) A good-faith transferee or obligee who that took for value or from any subsequent transferee or obligee.

(b) An immediate or mediate good-faith transferee of a person described in subparagraph division (a).

b. Recovery pursuant to section 684.7, subsection 1, paragraph "a", or section 684.7, subsection 2, of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph "a", subparagraph (1) or (2).

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 an interest in the asset transferred.

b. Enforcement of any an obligation incurred.

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

5. A transfer is not voidable under section 684.4, 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, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

6. A transfer is not voidable under section 684.5, 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, except to the extent 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.

7. The burden of proving matters referred to in this section is determined according to the following:

a. A party that seeks to invoke subsection 1, 4, 5, or 6, has the burden of proving the applicability of that subsection.

b. Except as otherwise provided in paragraphs “c” and “d”, the creditor has the burden of proving each applicable element of [subsection 2](#) or [3](#).

c. The transferee has the burden of proving the applicability to the transferee of [subsection 2](#), paragraph “a”, subparagraph (2), subparagraph division (a) or (b).

d. A party that seeks adjustment under [subsection 3](#) has the burden of proving the adjustment.

8. The standard of proof required to establish matters referred to in [this section](#) is preponderance of the evidence.

Sec. 9. Section 684.9, Code 2016, is amended to read as follows:

**684.9 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 as follows:

1. Under [section 684.4, subsection 1](#), paragraph “a”, ~~within five~~ 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.

2. Under [section 684.4, subsection 1](#), paragraph “b”, or [section 684.5, subsection 1](#), ~~within five~~ not later than four years after the transfer was made or the obligation was incurred.

3. Under [section 684.5, subsection 2](#), ~~within~~ not later than one year after the transfer was made ~~or the obligation was incurred~~.

Sec. 10. NEW SECTION. **684.9A Governing law.**

1. In [this section](#), a debtor’s location is determined as follows:

a. A debtor who is an individual is located at the individual’s principal residence.

b. A debtor that is an organization and has only one place of business is located at its place of business.

c. A debtor that is an organization and has more than one place of business is located at its chief executive office.

2. 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.

Sec. 11. NEW SECTION. **684.9B Application to series organization.**

1. As used in [this section](#):

a. “*Protected series*” means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph “b”.

b. “*Series organization*” means an organization that, pursuant to the law under which it 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 identify 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.

2. A series organization and each protected series of the 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 organization or other protected series of the organization.

Sec. 12. NEW SECTION. **684.9C 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, 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b).

Sec. 13. Section 684.12, Code 2016, is amended to read as follows:

**684.12 Short title.**

This chapter may be cited, which was formerly cited as the “*Uniform Fraudulent Transfer Act*” Act”, may be cited as the “*Iowa Uniform Voidable Transactions Act*”.

Sec. 14. CODE EDITOR DIRECTIVE.

1. The Code editor is directed to make the following transfers:
  - a. Section 684.9A, as enacted in this Act, to section 684.10.
  - b. Section 684.9B, as enacted in this Act, to section 684.11.
  - c. Section 684.9C, as enacted in this Act, to section 684.14.
  - d. Section 684.10 is transferred to section 684.12.
  - e. Section 684.11 is transferred to section 684.13.
  - f. Section 684.12, as amended in this Act, to section 684.15.
2. The Code editor is directed to correct internal references in the Code and in any enacted legislation as necessary due to the enactment of this section.

Sec. 15. APPLICABILITY.

1. a. This Act applies to a transfer made or an obligation incurred on or after the effective date of this Act.
  - b. This Act does not apply to a transfer made or an obligation incurred prior to the effective date of this Act.
2. For purposes of this section, a transfer is made and an obligation is incurred at the time provided in section 684.6.

Approved March 30, 2016