

State of Wisconsin



2023 Senate Bill 450

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2023 WISCONSIN ACT 246

AN ACT *to repeal* 242.02 (4); *to renumber* 242.08 (2) (a); *to renumber and amend* 242.08 (2) (b); *to amend* chapter 242 (title), 242.01 (3), 242.01 (9), 242.01 (12), 242.02 (2), 242.02 (3), 242.04 (title), 242.04 (1) (intro.), 242.05 (title), 242.05 (1), 242.05 (2), 242.06 (5) (b), 242.07 (1) (b), 242.08 (title), 242.08 (1), 242.08 (2) (intro.), 242.08 (5) (b), 402.402 (3) (b), 411.308 (2) (b), 705.07 (2), 815.18 (10) and 893.425; and *to create* 242.01 (6m), 242.01 (8m), 242.01 (10m), 242.01 (11m), 242.04 (3), 242.05 (3), 242.08 (2) (am) 2. b. and (bm), 242.08 (7) and (8), 242.094, 242.096, 242.12 and 242.13 of the statutes; **relating to:** adopting modifications to, and renaming, the Uniform Fraudulent Transfer Act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Chapter 242 (title) of the statutes is amended to read:

CHAPTER 242 UNIFORM FRAUDULENT TRANSFER ACT VOIDABLE TRANSACTIONS LAW

SECTION 2. 242.01 (3) of the statutes is amended to read:

242.01 (3) “~~Claim~~” “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.

SECTION 3. 242.01 (6m) of the statutes is created to read:

242.01 (6m) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

SECTION 4. 242.01 (8m) of the statutes is created to read:

242.01 (8m) “Organization” means a person other than an individual.

SECTION 5. 242.01 (9) of the statutes is amended to read:

242.01 (9) “Person” means an individual, estate, partnership, corporation, limited liability company, association, ~~organization~~, trust, business or nonprofit entity, public corporation, government or governmental subdivision or agency, ~~business trust~~, ~~estate~~, trust or instrumentality, or any other legal or commercial entity.

SECTION 6. 242.01 (10m) of the statutes is created to read:

242.01 (10m) “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.

SECTION 7. 242.01 (11m) of the statutes is created to read:

242.01 (11m) “Sign” means, with present intent to authenticate or adopt a record, any of the following:

(a) To execute or adopt a tangible symbol.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

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

SECTION 8. 242.01 (12) of the statutes is amended to read:

242.01 (12) “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.

SECTION 9. 242.02 (2) of the statutes is amended to read:

242.02 (2) 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~~.

SECTION 10. 242.02 (3) of the statutes is amended to read:

242.02 (3) A debtor who 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.

SECTION 11. 242.02 (4) of the statutes is repealed.

SECTION 12. 242.04 (title) of the statutes is amended to read:

242.04 (title) ~~Transfers fraudulent~~ **Transfer or obligation voidable as to present and or future creditors creditor.**

SECTION 13. 242.04 (1) (intro.) of the statutes is amended to read:

242.04 (1) (intro.) A transfer made or ~~obligations~~ 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:

SECTION 14. 242.04 (3) of the statutes is created to read:

242.04 (3) A creditor making a claim for relief under sub. (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 15. 242.05 (title) of the statutes is amended to read:

242.05 (title) ~~Transfers fraudulent~~ **Transfer or obligation voidable as to present creditors creditor.**

SECTION 16. 242.05 (1) of the statutes is amended to read:

242.05 (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 obliga-

tion and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

SECTION 17. 242.05 (2) of the statutes is amended to read:

242.05 (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.

SECTION 18. 242.05 (3) of the statutes is created to read:

242.05 (3) Subject to s. 242.02 (3), a creditor making a claim for relief under sub. (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 19. 242.06 (5) (b) of the statutes is amended to read:

242.06 (5) (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.

SECTION 20. 242.07 (1) (b) of the statutes is amended to read:

242.07 (1) (b) An attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with if available under~~ chs. 810 to 813 or other applicable law.

SECTION 21. 242.08 (title) of the statutes is amended to read:

242.08 (title) **Defenses, liability, and protection of transferee or obligee.**

SECTION 22. 242.08 (1) of the statutes is amended to read:

242.08 (1) A transfer or obligation is not voidable under s. 242.04 (1) (a) against a person who took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

SECTION 23. 242.08 (2) (intro.) of the statutes is amended to read:

242.08 (2) (intro.) ~~Except as otherwise provided in this section, to~~ To the extent a transfer is voidable in an action by a creditor under s. 242.07 (1) (a), all of the following rules apply:

(am) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under sub. (3), or the amount necessary to satisfy the creditor’s claim, whichever is less. The judgment may be entered against any of the following:

SECTION 24. 242.08 (2) (a) of the statutes is renumbered 242.08 (2) (am) 1.

SECTION 25. 242.08 (2) (am) 2. b. and (bm) of the statutes are created to read:

242.08 (2) (am) 2. b. An immediate or mediate good faith transferee of a person described in subd. 2. a.

(bm) Recovery pursuant to s. 242.07 (1) (a) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in par. (am) 1. or 2.

SECTION 26. 242.08 (2) (b) of the statutes is renumbered 242.08 (2) (am) 2. (intro.) and amended to read:

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

a. A good faith transferee who took for value or from any subsequent transferee.

SECTION 27. 242.08 (5) (b) of the statutes is amended to read:

242.08 (5) (b) Enforcement of a security interest in compliance with ch. 409, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

SECTION 28. 242.08 (7) and (8) of the statutes are created to read:

242.08 (7) The following rules determine the burden of proving matters referred to in this section:

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

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

(c) The transferee has the burden of proving the applicability to the transferee of sub. (2) (am) 2. a. or b.

(d) A party that seeks adjustment under sub. (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.

SECTION 29. 242.094 of the statutes is created to read:

242.094 Governing law. (1) In this section, the following rules determine a debtor's location:

(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 that 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.

SECTION 30. 242.096 of the statutes is created to read:

242.096 Application to series organization. (1) 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 par. (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.

SECTION 31. 242.12 of the statutes is created to read:

242.12 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not modify, limit, or supersede section 101 (c) of that act, 15 USC 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 USC 7003 (b).

SECTION 32. 242.13 of the statutes is created to read:

242.13 Short title. This chapter may be cited as the Uniform Voidable Transactions Law.

SECTION 33. 402.402 (3) (b) of the statutes is amended to read:

402.402 (3) (b) Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent or voidable transfer or voidable preference.

SECTION 34. 411.308 (2) (b) of the statutes is amended to read:

411.308 (2) (b) The lease contract is made under circumstances that under any statute or rule of law apart from this chapter would constitute the transaction a fraudulent or voidable transfer or voidable preference.

SECTION 35. 705.07 (2) of the statutes is amended to read:

705.07 (2) For purposes of ch. 242, a debtor party shall be deemed to have made a transfer only at the time some other party withdraws all or part of the sums on deposit, or at the time of the debtor party's death as to sums not previously withdrawn. In the case of a withdrawal while the debtor party is living, the sole grounds for determining any such transfer to be fraudulent voidable shall be whether the debtor party is or will be thereby rendered insolvent under s. 242.05 (1) or whether the debtor party is engaged or is about to engage in a business or transaction for which the assets remaining in the debtor party's hands after the transfer are unreasonably small under s. 242.04 (1) (b) 1. In the case of a transfer by reason of the death of the debtor party, the sole ground for determining any such transfer to be fraudulent voidable shall be whether the debtor party's estate subject to administration is insolvent under s. 242.02. For purposes of this subsection, the amount transferred shall be deemed to consist of those assets which the creditors of the debtor party could have made subject to their claims immediately prior to the transfer, less any sums which such creditors could have made so subject to their claims immediately after the transfer.

SECTION 36. 815.18 (10) of the statutes is amended to read:

815.18 (10) FRAUDULENT AND VOIDABLE TRANSFERS. A conveyance or transfer of wholly exempt property shall not be considered a fraudulent conveyance or a fraudulent or voidable transfer. Property that is not totally exempt in value under this section may be subject

to a fraudulent voidable transfer action under ch. 242 to set aside that transfer to the extent that the property's value is not exempt under this section. If a court is required to satisfy the claim of a creditor and if that relief is demanded, the court may determine the manner of dividing fraudulently transferred property or property for which the transfer is voidable into exempt and nonexempt portions, or may order the sale of the whole property and an accounting of the exempt portion. Any or all of the exemptions granted by this section may be denied if, in the discretion of the court having jurisdiction, the debtor procured, concealed or transferred assets with the intention of defrauding creditors.

SECTION 37. 893.425 of the statutes is amended to read:

893.425 Fraudulent Voidable transfers and obligations. An action with respect to a fraudulent transfer or obligation under ch. 242 shall be barred unless the action is commenced:

(1) Under s. 242.04 (1) (a), within not later than 4 years after the transfer is made or the obligation is incurred or, if later, within not later than one year after the transfer or obligation is or could reasonably have been discovered by the claimant.

(2) Under s. 242.04 (1) (b) or 242.05 (1), within not later than 4 years after the transfer is made or the obligation is incurred.

(3) Under s. 242.05 (2), within not later than one year after the transfer is made ~~or the obligation is incurred.~~