



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Assembly Bill 453

Assembly Committee on Consumer Protection

October 11, 2023

Chair Callahan and fellow members of the committee, thank you for hearing Assembly Bill 453 (AB 453), which amends and renames the Uniform Fraudulent Transfer Act as the Uniform Voidable Transactions Act (UVTA), promulgated by the Uniform Law Commission in 2014. So far, twenty-three states have enacted the UVTA Amendments including our neighboring states of Iowa, Michigan, and Minnesota.

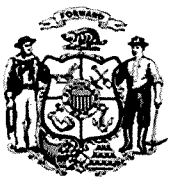
In 1988 Wisconsin Adopted the Uniform Fraudulent Transfer Act. This act, current law, provides a process for creditors to challenge asset transfers or obligations incurred by a debtor that would deprive the creditor of assets that would otherwise be used to satisfy a debt. Current law describes four circumstances when an asset transfer could be challenged by the creditor as fraudulent, or voidable. Current law also lays out remedies for creditors when one of the aforementioned transactions occurs.

This bill adopts the 2014 Uniform Law Commission amendments to the Uniform Fraudulent Transfers Act and includes the following changes:

- Replaces the term "fraudulent" with "voidable" to more-accurately reflect the meaning and operation of the law;
- Clarifies that a claim under the UVTA must be made where the debtor is located when a voidable transfer occurs (Section 29);
- Better defines when a debtor is considered insolvent (Section 10);
- Includes provisions regarding electronic signatures (Sections 7, 31) and the treatment of "protected series organizations," a new type of business entity (Section 30); and
- Clearly establishes the "preponderance of the evidence" standard and identifies which party bears the burden of proof for varying provisions (Section 28).

On behalf of the Wisconsin Commissioners of the Uniform Law Commission, the many states that have enacted the UFTA and UVTA, and those who find themselves utilizing the provisions of the UFTA and UVTA, we respectfully urge your support. Thank you for your time and consideration.

Please note that AB 453 is a re-draft of 2019 Assembly Bill 719, which passed unanimously out of the Assembly and did not pass the Senate due to the onset of the COVID-19 pandemic.



STATE SENATOR

Eric Wimberger

DISTRICT 30

**State Senator Eric Wimberger
Assembly Committee on Consumer Protection
Re: Adoption of the Uniform Voidable Transaction Act
Wednesday, October 11th, 2023**

Thank you Chairman Callahan and committee members for allowing me to testify on Assembly Bill 453, which would adopt the Uniform Law Commission's 2014 Uniform Fraudulent Transfer Act (UFTA).

Assembly Bill 453 is an update to the Uniform Fraudulent Transfer Act (UFTA), which Wisconsin adopted in 1988 to prohibit certain transactions and transfers of funds to avoid paying off a debt. The bill before you does the following:

- Clarifies confusing terms to reduce misunderstandings by courts. This includes replacing the term "fraudulent" with "voidable" to accurately reflect the meaning and operation of the law;
- Makes clear that a claim under the UVTA must be made where the debtor is located when a voidable transfer occurs. This will eliminate costly debates over which state's law applies, creating greater certainty and predictability that will save time and money;
- Improves provisions for determining when a debtor is considered insolvent;
- Includes updates for emerging legal developments like electronic communications, and the treatment of "protected series organizations," a new type of business entity;
- Clearly establishes the "preponderance of the evidence" standard and identifies which party bears the burden of proof for varying provisions.

These changes, while not the most exciting legislation, make important and necessary updates to Wisconsin law surrounding unlawful transfers and transactions. The UVTA is suggested legislation by the Council of State Governments and approved by the American Bar Association. The 2014 UVTA amendments have been enacted in 23 states, including our neighboring states - Michigan, Minnesota, Iowa, and Indiana.

Thank you, again for holding a hearing on AB 453 and I hope you will join us in supporting this bill.

BUSINESS LAW SECTION

To: Assembly Committee on Consumer Protection

Date: October 11, 2023

Re: Support of AB 453 – Relating to: Adopting Modifications and renaming the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act

The Business Law Section of the State Bar supports the passage of AB 453 relating to modifications and renaming the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act. We would like to thank Representative Tusler and Senator Wimberger for sponsoring this important legislation and for their work as members on the Uniform Law Commission.

In Wisconsin, a Commission on Uniform State Laws is created by Wis. Stat. §13.55. The Wisconsin commission consists of nine members: two public members appointed by the governor, four legislative members (two from each house and from different political parties), the director of the Legislative Council or staff designee, and chief of the Legislative Reference Bureau or staff designee.

The Wisconsin Commission meets annually to review all current and previous uniform acts passed by the Uniform Law Commission (ULC). The ULC includes commissioners from every state as well as members from the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Each individual jurisdiction appoints its commissioners, all of whom must be members of the bar. The ULC goal is to promote a unified and practical set of laws that states can enact either in entirety or with modifications based on existing established law or case law. A good example of the ULC's work is the adoption of the Uniform Commercial Code.

The Wisconsin Commission often requests that practice sections of the State Bar further review and study uniform laws for possible adoption. The State Bar's Business Law Section reviewed the act and voted to support the passage of AB 453.

The existing Uniform Fraudulent Transfer Act is out of date, and its unfortunate name has caused confusion in the Court system, as the statute does not require fraudulent activity as a condition to its application. With allegations of "fraud" requiring a heightened pleading standard and a higher burden of proof, this confusion has caused errant rulings refusing to apply the law to achieve its purpose. Furthermore, the bill clarifies other thorny issues that practitioners have encountered in working with the existing law.

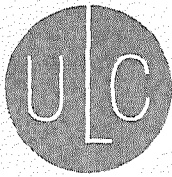
The Business Law Section believes that the bill will better achieve the intended purpose of the existing law, will clarify rights and responsibilities of parties in debtor-creditor relationships, and reduce the uncertainty of application plaguing the existing law.

If you have any additional questions, please contact Cale Battles, Government Relations Coordinator, at (608) 695-5686 or cbattles@wisbar.org.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only. The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.



STATE BAR OF WISCONSIN



**Written Testimony of
Kaitlin Wolff, ULC Legislative Program Director
In Support of
Assembly Bill 453
Before the Assembly Consumer Protection Committee
Wednesday, October 11, 2023**

Chair Callahan, Vice-Chair Johnson, and Committee Members:

Thank you for the opportunity to share my support for AB 453, which would enact the Uniform Voidable Transactions Law. This bill was crafted by the Uniform Law Commission (ULC), a non-partisan organization of the states. I serve as the ULC's Legislative Program Director and have the pleasure of working with our commissioners nationwide. Below I offer some details about why AB 453 is an important measure for Wisconsin to enact.

AB 453 strengthens protections against certain transactions that might impair creditors' rights. These situations in which the creditor may challenge a transfer made or obligation incurred by the debtor are referred to as "voidable transactions" under AB 453. One example is if a person transfers property to a relative to keep the property away from a creditor. In that example, the transfer is voidable. These protections are not a new development. In fact, AB 453 amends an earlier uniform act, the Uniform Fraudulent Transfer Act, which became law in Wisconsin in 1988. That earlier version of the uniform act has been adopted in 45 states.

States began adopting the Uniform Fraudulent Transfer Act in 1984. Since that time, some courts and practitioners have been struggling with the terminology of the Act, choosing which state's law should apply, and determining who bears the burden of proof. To address these and a few other narrow issues, the Uniform Law Commission, working in close cooperation with many American Bar Association Advisors, drafted amendments to the Uniform Fraudulent Transfer Act.

The 2014 amendments are the first made to the Act since its creation. These amendments, contained in AB 453, include the following:

First, the bill changes the title of the Act to the "Uniform Voidable Transactions Law." The original title of the Act was misleading because fraud is not, and never has been, a necessary element of a claim under the Act. Second, the Act has always applied to incurring obligations as well as transferring property. The amended title, the Uniform Voidable Transactions Law, will reduce misunderstanding by courts and litigants. In addition, the term "voidable" now appears instead of "fraudulent" throughout the text of the act.

AB 453 also resolves questions about which state's voidable transaction law should apply. Under the earlier version of the Act, courts used various legal theories to determine which state's law

should apply. The amendments add a clear choice-of-law rule that offers predictability, reduces costs, and conserves court resources. Under AB 453, the court must apply the law of the state where the debtor is located at the time the transfer is made or the obligation incurred. The amendments also provide uniform rules to allocate the burden of proof and to address emerging legal developments, such as electronic communications and a new form of business organization, the series limited liability company.

In short, AB 453 updates Wisconsin law to reduce misunderstanding, conserve court resources, reduce costs, and adapt it to emerging legal trends. To date, this uniform act has been enacted in 23 states, including neighboring Minnesota, Iowa, and Michigan. Thank you for your consideration of the bill, and I urge a favorable vote.

Respectfully Submitted,

A handwritten signature in black ink that reads "Kaitlin Wolff". The signature is written in a cursive, slightly slanted style.

Kaitlin Wolff