

§ 2285. Definitions

SECTION 1. DEFINITIONS. As used in this ~~chapter~~: [Act]:

(1) " "Affiliate" " means:

~~(A)~~ (i) a person ~~whothat~~ directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person

~~whothat~~ holds the securities:

~~(i)~~ (A) as a fiduciary or agent without sole discretionary power to vote the securities; or

~~(ii)~~ (B) solely to secure a debt, if the person has not in fact exercised the power to vote;

~~(B)~~ (ii) a corporation 20 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 that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) 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; or

~~(C)~~ (iv) a person ~~whothat~~ operates the ~~debtor's~~ debtor's business under a lease or other agreement or controls substantially all of the ~~debtor's~~ debtor's assets.

(2) " "Asset" " means property of a debtor, but the term does not include:

~~(A)~~ (i) property to the extent it is encumbered by a valid lien;
~~(B)~~ (ii) property to the extent it is generally exempt under nonbankruptcy law; or
~~(C)~~ (iii) 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", except as used in "claim for relief", means a right to payment, whether or not the right is reduced to ~~judgement~~ 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 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:

~~(A)~~ (i) if the debtor is an individual;

~~(i)~~ (A) a relative of the debtor or of a general partner of the debtor;

~~(ii)~~ (B) a partnership in which the debtor is a general partner;

~~(iii)~~ (C) a general partner in a partnership described in ~~subdivision (A)(ii) of this subdivision (6);~~ clause (B); or

~~(iv)~~ (D) a corporation of which the debtor is a director, officer, or person in control; ~~or~~

~~(v) a member-managed limited liability company in which the debtor is a member, a manager-managed limited liability company in which the debtor is a manager, or any limited liability company in which the debtor is in control;~~

~~(vi) a member in a member-managed limited liability company or a manager in a manager-managed limited liability company as described in subdivision (A)(v) of this subdivision (6);~~

~~(B)~~ _____ (ii) if the debtor is a corporation;

~~(i)~~ _____ (A) a director of the debtor;

~~(ii)~~ _____ (B) an officer of the debtor;

~~(iii)~~ _____ (C) a person in control of the debtor;

~~(iv)~~ _____ (D) a partnership in which the debtor is a general partner;

~~(v)~~ _____ (E) a general partner in a partnership described in ~~subdivision (B)(iv) of this subdivision (6) clause (D)~~; or

~~(vi)~~ _____ (F) a relative of a general partner, director, officer, or person in control of the debtor;

~~(C)~~ _____ (iii) if the debtor is a partnership;

~~(i)~~ _____ (A) a general partner in the debtor;

~~(ii)~~ _____ (B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

~~(iii)~~ _____ (C) another partnership in which the debtor is a general partner;

~~(iv)~~ _____ (D) a general partner in a partnership described in ~~subdivision clause (C)(iii) of this subdivision (6)~~; or

~~(v) a person in control of the debtor;~~

~~(D) if the debtor is a limited liability company,~~

~~(i) a member of the member managed limited liability company;~~

~~(ii) a manager of the manager managed limited liability company;~~

~~(iii) a partnership in which the debtor is a general partner;~~

~~(iv) a general partner in a partnership described in subdivision (D)(iii) of this subdivision (6); or~~

~~(v)~~ _____ (E) a person in control of the debtor;

~~(E)~~ _____ (iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

~~(E)~~ _____ (v) a managing agent of the debtor.

~~(7)~~ " (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.

~~(8)~~ "~~Person~~" (10) "Organization" means a person other than an individual~~,~~

(11) "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 any instrumentality, or other legal or commercial entity.

~~(9)~~ "~~Property~~" (12) "Property" means anything that may be the subject of ownership.

~~(40)~~ "~~Record~~" (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.

(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.

~~(41)~~ "~~Sign~~" (15) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

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

(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.

~~(42)~~ "~~Valid lien~~" (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. ~~(Added 1995, No. 179 (Adj. Sess.), § 14.)~~

~~§ 2286. Insolvency~~

SECTION 2. INSOLVENCY.

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

(b) A debtor ~~who~~that is generally not paying ~~his or her~~the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent.

~~(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than~~ The presumption imposes on the ~~aggregate, at a fair valuation, of all of party against which~~ the partnership's assets and presumption is directed the ~~sum~~burden of proving that the ~~excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts~~nonexistence of insolvency is more probable than its existence.

~~(d)~~ (c) Assets under this section do not include property that has been transferred, concealed, or removed with ~~the~~ intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer ~~voidable~~voidable under this ~~chapter~~[Act].

~~(e)~~ (d) 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. ~~(Added 1995, No. 179 (Adj. Sess.); § 14.)~~

~~§ 2287. Value~~

SECTION 3. VALUE.

~~_____~~ (a) 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.

(b) For the purposes of ~~subdivision 2288~~Section 4(a)(2) and Section ~~2289 of this title 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, ~~none~~nonexclusive 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.

(c) 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. ~~(Added 1995, No. 179 (Adj. Sess.), § 14.)~~

~~§ 2288. Transfers fraudulent as to present and future creditors~~

SECTION 4. TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT OR FUTURE CREDITOR.

_____ (a) A transfer made or obligation incurred by a debtor is fraudulent voidable as to a creditor, whether the ~~creditor's~~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:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

~~(A~~ _____ (i) 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; or

~~(B~~ _____ (ii) intended to incur, or believed or reasonably should have believed that ~~he or she~~the debtor would incur, debts beyond ~~his or her~~the debtor's ability to pay as they became due.

(b) In determining actual intent under ~~subdivision subsection~~ (a)(1) ~~of this section,~~

consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the ~~debtor's~~debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) 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;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor ~~who~~that transferred the assets to an insider of the debtor. ~~(Added 1995, No. 179 (Adj. Sess.), § 14.)~~

~~§ 2289. Transfers fraudulent as to present creditors~~

~~(c) A creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.~~

SECTION 5. TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT CREDITOR.

(a) 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.

(b) 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. ~~(Added 1995, No. 179 (Adj. Sess.), § 14.)~~

~~§ 2290. When transfer is made or obligation is incurred~~

(c) Subject to Section 2(b), a creditor making a claim for relief under subsection (a) or (b) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SECTION 6. WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED.

For the purposes of this ~~chapter~~:[Act]:

(1) a transfer is made:

~~(A)~~ (i) 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; and

~~(B)~~ (ii) 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~~:[Act] that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in

~~subdivision paragraph (1) of this section~~ and the transfer is not so perfected before the commencement of an action for relief under this ~~chapter, [Act]~~, 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 ~~subdivision paragraph (1) of this section,~~ 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; ~~and~~

(5) an obligation is incurred:

~~(A~~ _____ (i) if oral, when it becomes effective between ~~the~~ parties; or

~~(B~~ _____ (ii) 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. ~~(Added 1995, No. 179 (Adj. Sess.), § 14.)~~

~~§ 2291. Remedies of creditors~~

SECTION 7. REMEDIES OF CREDITOR.

_____ (a) In an action for relief against a transfer or obligation under this ~~chapter, [Act]~~, a creditor, subject to the limitations in Section ~~2292 of this title 8,~~ may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the ~~creditor's~~creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with the procedure prescribed by the Vermont Rules of Civil Procedure;~~if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

~~(A~~ _____ (i) an injunction against further disposition by the debtor or a transferee, or

(A) a good-faith transferee ~~who~~that took for value ~~or~~; or

(B) an immediate or mediate good-faith transferee of a person described in clause (A).

(2) Recovery pursuant to Section 7(a)(1) or (b) of or from ~~any subsequent transferee~~the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (1)(i) or (ii).

(c) If the judgment under subsection (b) ~~of this section~~ 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.

(d) Notwithstanding voidability of a transfer or an obligation under this ~~chapter~~,[Act], a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) a lien on or a right to retain any interest in the asset transferred;
- (2) enforcement of any obligation incurred; or
- (3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under ~~subdivision 2288~~Section 4(a)(2) or Section ~~2289~~ of this title 5 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with ~~9A V.S.A. Article 9~~; ~~or~~

~~(3) foreclosure of a mortgage~~ the Uniform Commercial Code, other than acceptance of collateral in compliance with 12 V.S.A. chapter 163, subchapter 6 or chapter 172, subchapter 1 full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under ~~subsection 2289~~Section 5(b) of this title:

(1) 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;

(2) if made in the ordinary course of business or financial affairs of the ~~debtors~~debtor and the insider; or

(3) 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.

~~(Added 1995, No. 179 (Adj. Sess.), § 14; amended 2005, No. 133 (Adj. Sess.), § 1, eff. May 5, 2006; 2013, No. 194 (Adj. Sess.), § 3, eff. June 17, 2014.)~~

§ 2293. Extinguishment of cause of action

A cause (g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of ~~action~~that subsection.

(2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).

(3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).

(4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

SECTION 9. EXTINGUISHMENT OF CLAIM FOR RELIEF. A claim for relief with respect to a ~~fraudulent~~ transfer or obligation under this ~~chapter~~[Act] is extinguished unless action is brought:

~~(1)~~ (a) under ~~subdivision 2288(a)(1) of this title within~~Section 4(a)(1), 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)~~ (b) under ~~subdivision 2288~~Section 4(a)(2) or ~~subsection 22895(a) of this title within~~, not later than four years after the transfer was made or the obligation was incurred; or

~~(3)~~ (c) under ~~subsection 2289(b) of this title, within~~Section 5(b), not later than one year after the transfer was made.

SECTION 10. GOVERNING LAW.

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

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

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

(b) A claim for relief in the nature of a claim for relief under this [Act] is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation ~~was~~is incurred. ~~(Added 1995, No. 179 (Adj. Sess.), § 14.)~~

§ 2294. Supplementary provisions

SECTION 11. APPLICATION TO SERIES ORGANIZATION.

(a) In this section:

(1) “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 (2).

(2) “Series organization” means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) 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.

(ii) 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.

(iii) 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.

(b) A series organization and each protected series of the organization is a separate person for purposes of this [Act], even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Legislative Note: This section should be enacted even if the enacting jurisdiction does not itself have legislation enabling the creation of protected series. For example, in such an enacting jurisdiction this section will apply if a protected series of a series organization organized under the law of a different jurisdiction makes a transfer to another protected series of that organization and, under applicable choice of law rules, the voidability of the transfer is governed by the law of the enacting jurisdiction.

SECTION 12. SUPPLEMENTARY PROVISIONS. Unless displaced by the provisions of this ~~chapter~~[Act], 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 ~~the~~its provisions of this chapter. (~~Added 1995, No. 179 (Adj. Sess.), § 14.~~)

§ 2295. Uniformity of application and construction
This chapter **SECTION 13. UNIFORMITY OF APPLICATION AND**

CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this ~~chapter~~[Act] among states enacting it. (~~Added 1995, No. 179 (Adj. Sess.), § 14.~~)

~~Subchapter 2: False Checks, Drafts, Or Orders~~

~~§ 2311. Civil remedy for bad checks; damages~~

~~(a) In any action against a person who makes, issues, or draws any check, draft, or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker, issuer, or drawer has no account with the drawee, the holder may recover from the maker, issuer, or drawer court costs, costs of service, the amount of the check, draft, or order, bank fees, interest, attorney's fees, and damages in the amount of \$50.00. A holder may only recover attorney's fees and damages under this section if the holder gives notice pursuant to this section, for payment of the check, draft, or order and the maker, issuer, or drawer fails to tender within 30 days of the date of notice an amount equal to the amount of the check, draft, or order, plus bank fees and mailing costs.~~

~~(b) As used in this section:~~

~~(1) "Dishonored" includes a stop payment order issued without cause.~~

~~(2) "Notice" means notice given to the maker, drawer, or issuer of the check, draft, or order in writing. Notice in writing shall include the date the check was written, the person to whom the check was made payable, bank fees, mailing costs, the amount of the check, and the date by which payment should be made. Notice in writing shall be conclusively presumed to have been given:~~

~~(A) when properly mailed by certified mail and by first class mail, addressed to the maker, drawer, or issuer at the address as it appears on the check, draft, or order or at the last known address; or~~

~~(B) if:~~

~~(i) the notice has been properly mailed by first class mail addressed to the maker, drawer, or issuer at the address as it appears on the check, draft, or order or at the last known address;~~

~~(ii) the notice is supported by an affidavit of service by mailing; and~~

~~(iii) three days have gone by after the date the affidavit is executed. (Amended 1971, No. 185 (Adj. Sess.), § 23, eff. March 29, 1972; 1971, No. 254 (Adj. Sess.), § 2, eff. April 11, 1972; 1987, No. 260 (Adj. Sess.); 2005, No. 60, § 1.)~~

~~§ 2312. Prima facie evidence of knowledge~~

~~As against the maker or drawer thereof, the making, drawing, uttering, or delivery of such check, draft, or order, the payment of which is refused by the drawee for the reason that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation, shall be prima facie evidence of knowledge at the time of such making, drawing, uttering, or delivery that the maker or drawer did not have sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation, unless such maker or drawer shall pay such check, draft, or order, with all costs and protest fees, within eight days after receiving notice that the same has not been paid by the drawee.~~

SECTION 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 15. SHORT TITLE. This [Act], which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable Transactions Act.

SECTION 16. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

Legislative Note: *The legislation enacting the 2014 amendments in a jurisdiction in which the act is already in force should provide as follows: (i) the amendments apply to a transfer made or*

obligation incurred on or after the effective date of the enacting legislation, (ii) the amendments do not apply to a transfer made or obligation incurred before the effective date of the enacting legislation, (iii) the amendments do not apply to a right of action that has accrued before the effective date of the enacting legislation, and (iv) for the foregoing purposes a transfer is made and an obligation is incurred at the time provided in Section 6 of the act. In addition, the enacting legislation should revise any reference to the act by its former title in other permanent legislation of the enacting jurisdiction.