

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 770

6
7 S.P. 244

In Senate, February 27, 1985

8 Reference to the Committee on Business and Commerce suggested. In
9 Senate, February 27, 1985.

10 On motion of Senator Violette of Aroostook referred to the Committee
on Judiciary. Sent down for concurrence and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

11 Cosponsored by Senator Carpenter of Aroostook, Representative Kane of
So. Portland and Representative Davis of Monmouth.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Adopt a State Uniform
18 Fraudulent Transfer Act.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 14 MRSA §859 is amended to read:

23 §859. Limitation extended in cases of fraud

24 If a person, liable to any action mentioned,
25 fraudulently conceals the cause thereof from the per-
26 son entitled thereto, or if a fraud is committed
27 which entitles any person to an action, the action
28 may be commenced at any time within 6 years after the
29 person entitled thereto discovers that he has just
30 cause of action, except as provided in section 3580.

31 Sec. 2. 14 MRSA §3155 is repealed.

32 Sec. 3. 14 MRSA c. 504 is enacted to read:

1 CHAPTER 504

2 UNIFORM FRAUDULENT TRANSFER ACT

3 §3571. Short title

4 This chapter may be cited as the Uniform Fraudu-
5 lent Transfer Act.

6 §3572. Definitions

7 As used in this Act, unless the context otherwise
8 indicates, the following terms have the following
9 meanings.

10 1. Affiliate. "Affiliate" means:

11 A. A person who directly or indirectly owns,
12 controls or holds with power to vote, 20% or more
13 of the outstanding voting securities of the debt-
14 or, other than a person who holds the securities:

15 (1) As a fiduciary or agent without sole
16 discretionary power to vote the securities;
17 or

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

20 B. A corporation 20% or more of whose outstand-
21 ing voting securities are directly or indirectly
22 owned, controlled or held with power to vote, by
23 the debtor, or a person who directly or indirect-
24 ly owns, controls or holds with power to vote 20%
25 or more of the outstanding voting securities of
26 the debtor, other than a person who holds the se-
27 curities:

28 (1) As a fiduciary or agent without sole
29 power to vote the securities; or

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

32 C. A person whose business is operated by the
33 debtor under a lease or other agreement, or a
34 person substantially all of whose assets are con-
35 trolled by the debtor; or

1 D. A person who operates the debtor's business
2 under a lease or other agreement or controls sub-
3 stantially all of the debtor's assets.

4 2. Asset. "Asset" means property of a debtor,
5 but does not include:

6 A. Property to the extent that it is encumbered
7 by a valid lien;

8 B. Property to the extent that it is generally
9 exempt under nonbankruptcy law; or

10 C. An interest in property held in tenancy by
11 the entirety to the extent that it is not sub-
12 ject to process by a creditor holding a claim
13 against only one tenant.

14 3. Claim. "Claim" means a right to payment,
15 whether or not the right is reduced to judgment, liq-
16 uidated, unliquidated, fixed, contingent, matured,
17 unmatured, disputed, undisputed, legal, equitable,
18 secured or unsecured.

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

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

22 6. Debtor. "Debtor" means a person who is lia-
23 ble on a claim.

24 7. Insider. "Insider" includes:

25 A. If the debtor is an individual:

26 (1) A relative of the debtor or of a gener-
27 al partner of the debtor;

28 (2) A partnership in which the debtor is a
29 general partner;

30 (3) A general partner in a partnership de-
31 scribed in subparagraph (2); or

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

1 B. If the debtor is a corporation:

2 (1) A director of the debtor;

3 (2) An officer of the debtor;

4 (3) A person in control of the debtor;

5 (4) A partnership in which the debtor is a
6 general partner;

7 (5) A general partner in a partnership de-
8 scribed in subparagraph (4); or

9 (6) A relative of a general partner, direc-
10 tor, officer or person in control of the
11 debtor;

12 C. If the debtor is a partnership:

13 (1) A general partner in the debtor;

14 (2) A relative of a general partner in, or
15 a general partner of or of a person in con-
16 trol of, the debtor;

17 (3) Another partnership in which the debtor
18 is a general partner;

19 (4) A general partner in a partnership de-
20 scribed in subparagraph (3); or

21 (5) A person in control of the debtor;

22 D. An affiliate or an insider of an affiliate as
23 if the affiliate were the debtor; and

24 E. A managing agent of the debtor.

25 8. Lien. "Lien" means a charge against or an
26 interest in property to secure payment of a debt or
27 performance of an obligation, and includes a security
28 interest created by agreement, a judicial lien ob-
29 tained by legal or equitable process or proceedings,
30 a common law lien or a statutory lien.

1 9. Person. "Person" means an individual, part-
2 nership, corporation, association, organization, gov-
3 ernment or governmental subdivision or agency, busi-
4 ness trust, estate, trust or any other legal or com-
5 mmercial entity.

6 10. Property. "Property" means anything that
7 may be the subject of ownership.

8 11. Relative. "Relative" means an individual
9 related by consanguinity within the 3rd degree as de-
10 termined by the common law, a spouse or an individual
11 related to a spouse within the 3rd degree as so de-
12 termined, and includes an individual in an adoptive
13 relationship within the 3rd degree.

14 12. Transfer. "Transfer" means every mode, di-
15 rect or indirect, absolute or conditional, voluntary
16 or involuntary, of disposing of or parting with an
17 asset or an interest in an asset, and includes pay-
18 ment of money, release, lease and creation of a lien
19 or other encumbrance.

20 13. Valid lien. "Valid lien" means a lien that
21 is effective against the holder of a judicial lien
22 subsequently obtained by legal or equitable process
23 or proceedings.

24 §3573. Insolvency

25 1. Debts greater than assets. A debtor is in-
26 solvent if the sum of the debtor's debts is greater
27 than all of the debtor's assets at a fair valuation.

28 2. Presumption of insolvency. A debtor who is
29 generally not paying his debts as they become due is
30 presumed to be insolvent.

31 3. Partnership insolvency. A partnership is in-
32 solvent under subsection 1 if the sum of the
33 partnership's debts is greater than the aggregate of
34 all of the partnership's assets at a fair valuation,
35 and the sum of the excess of the value of each gener-
36 al partner's nonpartnership assets over the partner's
37 nonpartnership debts.

1 4. Assets. Assets under this section do not in-
2 clude property that has been transferred, concealed
3 or removed with intent to hinder, delay or defraud
4 creditors or that has been transferred in a manner
5 making the transfer voidable under this Act.

6 5. Debts. Debts under this section do not in-
7 clude an obligation to the extent it is secured by a
8 valid lien on property of the debtor not included as
9 an asset.

10 §3574. Value

11 1. Value defined. Value is given for a transfer
12 or an obligation if in exchange for the transfer or
13 obligation property is transferred or an antecedent
14 debt is secured or satisfied, but value does not in-
15 clude an unperformed promise made otherwise than in
16 the ordinary course of the promisor's business to
17 furnish support to the debtor or another person.

18 2. Reasonably equivalent value. For the pur-
19 poses of section 3575, subsection 1, paragraph B, and
20 section 3576, a person gives a reasonably equivalent
21 value if the person acquires an interest of the debt-
22 or in an asset pursuant to a regularly conducted,
23 noncollusive foreclosure sale or execution of a power
24 of sale for the acquisition or disposition of the in-
25 terest of the debtor upon default under a mortgage,
26 deed of trust or security agreement.

27 3. Transfer; obligation. A transfer is made for
28 present value if the exchange between the debtor and
29 the transferee is intended by them to be contempora-
30 neous and is in fact substantially contemporaneous.

31 §3575. Transfers fraudulent as to present and future
32 creditors

33 1. Fraudulent transfer. A transfer made or ob-
34 ligation incurred by a debtor is fraudulent as to a
35 creditor, whether the creditor's claim arose before
36 or after the transfer was made or the obligation was
37 incurred, if the debtor made the transfer or incurred
38 the obligation:

39 A. With actual intent to hinder, delay or de-
40 fraud any creditor of the debtor; or

1 B. Without receiving a reasonably equivalent
2 value in exchange for the transfer or obligations
3 and the debtor:

4 (1) Was engaged or was about to engage in a
5 business or a transaction for which the re-
6 maining assets of the debtor were unreason-
7 ably small in relation to the business or
8 transaction; or

9 (2) Intended to incur, or believed or rea-
10 sonably should have believed that he would
11 incur, debts beyond his ability to pay as
12 the debts became due.

13 2. Determination of actual intent. In determin-
14 ing actual intent under subsection 1, paragraph A,
15 consideration may be given, among other factors, to
16 whether:

17 A. The transfer or obligation was to an insider;

18 B. The debtor retained possession or control of
19 the property transferred after the transfer;

20 C. The transfer or obligation was disclosed or
21 concealed;

22 D. Before the transfer was made or obligation
23 was incurred, the debtor sued or threatened with
24 suit;

25 E. The transfer was of substantially all the
26 debtor's assets;

27 F. The debtor absconded;

28 G. The debtor removed or concealed assets;

29 H. The value of the consideration received by
30 the debtor was reasonably equivalent to the value
31 of the asset transferred or the amount of the ob-
32 ligation incurred;

33 I. The debtor was insolvent or became insolvent
34 shortly after the transfer was made or the obli-
35 gation was incurred;

1 J. The transfer occurred shortly before or
2 shortly after a substantial debt was incurred;
3 and

4 K. The debtor transferred the essential assets
5 of the business to a lienor who had transferred
6 the assets to an insider of the debtor.

7 §3576. Transfers fraudulent as to present creditors

8 1. Transfers without receipt of reasonably
9 equivalent value. A transfer made or obligation in-
10 curring by a debtor is fraudulent as to a creditor
11 whose claim arose before the transfer was made or the
12 obligation was incurred if the debtor made the trans-
13 fer or incurred the obligation without receiving a
14 reasonably equivalent value in exchange for the
15 transfer or obligation and the debtor was insolvent
16 at that time or the debtor became insolvent as a re-
17 sult of the transfer or obligation.

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

25 §3577. When transfer is made or obligation is in-
26 curring

27 For the purposes of this Act:

28 1. Perfection of trade. A transfer is made:

29 A. With respect to an asset that is real proper-
30 ty other than a fixture, but including the inter-
31 est of a seller or purchaser under a contract for
32 the sale of the asset, when the transfer is so
33 far perfected that a good-faith purchaser of the
34 asset from the debtor against whom applicable law
35 permits the transfer to be perfected cannot ac-
36 quire an interest in the asset that is superior
37 to the interest of the transferee; and

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

7 2. Transfer prior to commencement of action. If
8 applicable law permits the transfer to be perfected
9 as provided in subsection 1 and the transfer is not
10 so perfected before the commencement of an action for
11 relief under this Act, the transfer is made immedi-
12 ately before the commencement of the action;

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

18 4. Transfer not made until debtor acquired
19 rights in asset. A transfer is not made until the
20 debtor has acquired rights in the asset transferred;
21 and

22 5. Obligation; when incurred. Obligation when
23 incurred:

24 A. If oral, when it becomes effective between
25 the parties; or

26 B. If evidenced by a writing, when the writing
27 executed by the obligor is delivered to or for
28 the benefit of the obligee.

29 §3578. Remedies of creditors

30 1. Action for relief. In any action for relief
31 against a transfer or obligation under this Act, a
32 creditor, subject to the limitations provided in sec-
33 tion 3579, may obtain:

34 A. Avoidance of the transfer or obligation to
35 the extent necessary to satisfy the creditor's
36 claim;

1 B. An attachment, trustee process or other pro-
2 visional remedy against the asset transferred or
3 other property of the transferee in accordance
4 with the procedure prescribed by law; or

5 C. Subject to applicable principles of equity
6 and in accordance with applicable civil rules of
7 procedure:

8 (1) An injunction against further disposi-
9 tion by the debtor or a transferee, or both,
10 of the asset transferred or of other proper-
11 ty;

12 (2) Appointment of a receiver to take
13 charge of the asset transferred or of other
14 property of the transferee; or

15 (3) Any other relief the circumstances may
16 require.

17 2. Execution. If a creditor has obtained a
18 judgment on a claim against the debtor, the creditor,
19 if the court so orders, may levy execution on the as-
20 set transferred or its proceeds.

21 §3579. Defenses, liability and protection of trans-
22 feree

23 1. Transfer or obligation not voidable. A
24 transfer or obligation is not voidable under section
25 3575, subsection 1, paragraph A, against a person who
26 took in good faith and for a reasonably equivalent
27 value or against any subsequent transferee or obli-
28 gee.

29 2. Judgment. Except as otherwise provided in
30 this section, to the extent a transfer is voidable in
31 an action by a creditor under section 3578, subsec-
32 tion 1, paragraph A, the creditor may recover judg-
33 ment for the value of the asset transferred, as ad-
34 justed under subsection 3, or the amount necessary to
35 satisfy the creditor's claim, whichever is less. The
36 judgment may be entered against:

37 A. The first transferee of the asset or the per-
38 son for whose benefit the transfer was made; or

1 B. Any subsequent transferee other than a
2 good-faith transferee or obligee who took for
3 value or from any subsequent transferee or obli-
4 gee.

5 3. Value of asset. If the judgment under sub-
6 section 2 is based upon the value of the asset trans-
7 ferred, the judgment must be for an amount equal to
8 the value of the asset at the time of the transfer,
9 subject to adjustment as the equities may require.

10 4. Rights of good-faith transferee or obligee.
11 Notwithstanding voidability of a transfer or an obli-
12 gation under this Act, a good-faith transferee or obli-
13 gee is entitled, to the extent of the value given
14 the debtor for the transfer or obligation to:

15 A. A lien on or a right to retain any interest
16 in the asset transferred;

17 B. Enforcement of any obligation incurred; or

18 C. A reduction in the amount of the liability on
19 the judgment.

20 5. Transfer not voidable; new value. A transfer
21 is not voidable under section 3575, subsection 2,
22 paragraph B, or section 3576 if the transfer results
23 from:

24 A. Termination of a lease upon default by the
25 debtor when the termination is pursuant to the
26 terms of the lease and applicable law; or

27 B. Enforcement of a security interest in compli-
28 ance with the Uniform Commercial Code, Title 11,
29 Article 9.

30 6. Transfer to insider. A transfer is not void-
31 able under section 3576, subsection 2:

32 A. To the extent the insider gave new value to
33 or for the benefit of the debtor after the trans-
34 fer was made unless the new value was secured by
35 a valid lien:

1 B. If made in the ordinary course of business or
2 financial affairs of the debtor and the insider;
3 or

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

8 §3580. Extinguishment of cause of action

9 A cause of action with respect to a fraudulent
10 transfer or obligation under this Act is extinguished
11 unless action is brought:

12 1. Intent to defraud. Under section 3575, sub-
13 section 1, paragraph A, within 6 years after the
14 transfer was made or the obligation was incurred or,
15 if later, within one year after the transfer or obli-
16 gation was or could reasonably have been discovered
17 by the claimant;

18 2. Failure to receive reasonably equivalent val-
19 ue. Under section 3575, subsection 1, paragraph B,
20 or section 3576, subsection 1, within 6 years after
21 the transfer was made or the obligation was incurred;
22 or

23 3. Transfer to insider. Under section 3576,
24 subsection 2, within 2 years after the transfer was
25 made or the obligation was incurred.

26 §3581. Supplementary provisions

27 Unless displaced by the provisions of this Act,
28 the principles of law and equity, including the law
29 merchant and the law relating to principal and agent,
30 estoppel, laches, fraud, misrepresentation, duress,
31 coercion, mistake, insolvency or other validating or
32 invalidating cause, supplement its provisions.

1

STATEMENT OF FACT

2

The purpose of this bill is to enact the Uniform
3 Fraudulent Transfer Act.

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