

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

Whereas, joint operation of correctional facilities and services can promote effectiveness and cost efficiencies at a time when considerations of cost alone make it increasingly difficult to operate certain county corrections programs in a manner which complies with state jail standards; and

Whereas, certain counties have expressed the desire to realize these economies and efficiencies by joint efforts to serve certain classes of offenders; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

30 MRSA §1124, as enacted by PL 1977, c. 431, §15, is amended to read:

§1124. Detention

Each county shall provide detention facilities, either within the county or, by contract with another county, outside the county. ~~Adjoining counties~~ Counties may enter into an agreement under chapter 203 to provide consolidated detention facilities for the use of those counties.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 3, 1986.

CHAPTER 641

S.P. 244 - L.D. 770

AN ACT to Adopt a State Uniform Fraudulent Transfer Act.

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

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

§859. Limitation extended in cases of fraud

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

Sec. 2. 14 MRSA §3155 is repealed.

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

CHAPTER 504UNIFORM FRAUDULENT TRANSFER ACT§3571. Short title

This chapter may be cited as the Uniform Fraudulent Transfer Act.

§3572. Definitions

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

1. Affiliate. "Affiliate" means:

A. A person who directly or indirectly owns, controls or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

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

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

B. A corporation 20% 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 directly or indirectly owns, controls or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

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

(2) Solely to secure a debt, if the person has not 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; or

D. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

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

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

B. Property to the extent that it is generally exempt under nonbankruptcy law.

3. Claim. "Claim" 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. "Creditor" means a person who has a claim.

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

6. Debtor. "Debtor" means a person who is liable on a claim.

7. Insider. "Insider" includes:

A. If the debtor is an individual:

(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); or

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

B. If the debtor is a corporation:

(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); or
- (6) A relative of a general partner, director, officer or person in control of the debtor;

C. If the debtor is a partnership:

- (1) A general partner in the debtor;
- (2) A relative of a general partner in, or a general partner of or of 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); or
- (5) A person in control of the debtor;

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

E. A managing agent of the debtor.

8. Lien. "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.

9. Person. "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

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

11. Relative. "Relative" means an individual related by consanguinity within the 3rd degree as determined by the common law, a spouse or an individual

related to a spouse within the 3rd degree as so determined, and includes an individual in an adoptive relationship within the 3rd degree.

12. Transfer. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease or creation of a lien or other encumbrance.

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

§3573. Insolvency

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

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

3. Partnership insolvency. A partnership is insolvent under subsection 1 if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

4. Assets; exclusion. 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 Act.

5. Debts. 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.

§3574. Value

1. Value defined. 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.

2. Reasonably equivalent value; foreclosure. For the purposes of section 3575, subsection 1, paragraph B, and section 3576, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, 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.

3. Contemporaneous transfer. 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.

§3575. Transfers fraudulent as to present and future creditors

1. Fraudulent transfer. A transfer made or obligation incurred by a debtor is fraudulent 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:

A. With actual intent to hinder, delay or defraud any creditor of the debtor; or

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

(1) 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

(2) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as the debts became due.

2. Determination of actual intent. In determining actual intent under subsection 1, paragraph A, consideration may be given, among other factors, to whether:

A. The transfer or obligation was to an insider;

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

C. The transfer or obligation was disclosed or concealed;

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

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

F. The debtor absconded;

G. The debtor removed or concealed assets;

H. 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. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

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

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

§3576. Transfers fraudulent as to present creditors

1. Transfers without receipt of reasonably equivalent value. A transfer made or obligation incurred by a debtor is fraudulent 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. Transfer to insider. A transfer made by a debtor is fraudulent 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.

§3577. When transfer is made or obligation is incurred

For the purposes of this Act:

1. Perfection of transfer. A transfer is made:

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 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. 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 Act that is superior to the interest of the transferee;

2. Transfer; relation back. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this Act, the transfer is made immediately before the commencement of the action;

3. Other transfer. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee;

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

5. Obligation; when incurred. An obligation is incurred:

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

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

§3578. Remedies of creditors

1. Action for relief. In any action for relief against a transfer or obligation under this Act, a creditor, subject to the limitations provided in section 3579, may obtain:

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

B. An attachment, trustee process or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by law; or

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

(1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

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

(3) Any other relief the circumstances may require.

2. Execution. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

§3579. Defenses, liability and protection of transferee

1. Transfer or obligation not voidable. A transfer or obligation is not voidable under section 3575, subsection 1, paragraph A, against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

2. Judgment. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 3578, 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:

A. The first transferee of the asset or the person for whose benefit the transfer was made; or

B. Any subsequent transferee other than a good-faith transferee or obligee who took for

value or from any subsequent transferee or obligee.

3. Value of asset. 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. Rights of good-faith transferee or obligee. Notwithstanding voidability of a transfer or an obligation under this Act, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation to:

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

B. Enforcement of any obligation incurred; or

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

5. Defenses; lease termination and foreclosure of security interest. A transfer is not voidable under section 3575, subsection 1, paragraph B, or section 3576, subsection 1, if the transfer results from:

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

B. Enforcement of a security interest in compliance with the Uniform Commercial Code, Title 11, Article 9.

6. Defenses; insider transfers. A transfer is not voidable under section 3576, subsection 2:

A. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless 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; or

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.

§3580. Extinguishment of cause of action

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

1. Intent to defraud. Under section 3575, subsection 1, paragraph A, within 6 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or

2. Failure to receive reasonably equivalent value; transfer to insider. Under section 3575, subsection 1, paragraph B, or section 3576, subsection 1 or 2, within 6 years after the transfer was made or the obligation was incurred.

§3581. Supplementary provisions

Unless displaced by the provisions of this 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 its provisions.

§3582. 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 Act among states enacting it.

Effective July 16, 1986.

CHAPTER 642

H.P. 1581 - L.D. 2225

AN ACT to Clarify Certain Provisions of a
Publicly-held Financial Institution.

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

Sec. 1. 9-B MRSA §316, sub-§1, ¶F, as enacted by PL 1975, c. 500, §1, is amended to read: