

LEGISLATIVE HISTORY CHECKLIST

NJSA: 3B:9-9 et al

("Uniform
Fraudulent
Transfer Act")

LAWS OF: 1988

CHAPTER: 74

Bill No: A1265

Sponsor(s): Riley

Date Introduced: Pre-filed

Committee: Assembly: Financial Institutions

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: March 7, 1988

Senate: May 23, 1988

Date of Approval: August 1, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

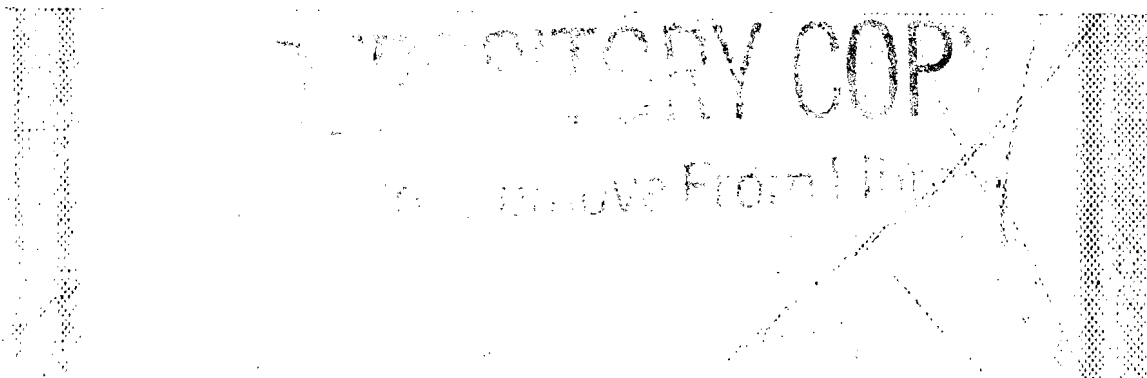
Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No



P.L. 1988, CHAPTER 74, *approved August 1, 1988*
1988 Assembly No. 1265 (*Second Reprint*)

1 **AN ACT** revising the law concerning fraudulent transfers of real
property and personal property, enacting Article 3 to Chapter
3 2 of Title 25 of the Revised Statutes, and amending N.J.S.
3B:9-9 and P.L. 1979, c. 492.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the
7 **State of New Jersey:**

1.

9 TITLE 25
CHAPTER 2

11 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

- 25:2-20. Short title.
13 25:2-21. Definitions: A to H.
25:2-22. Definitions: I to Z.
15 25:2-23. Insolvency.
25:2-24. Value.
17 25:2-25. Transfers fraudulent as to present and future
creditors.
19 25:2-26. Factors in determining fraudulent intent.
25:2-27. Transfers fraudulent as to present creditors.
21 25:2-28. When transfer is made or obligation incurred.
25:2-29. Remedies of creditors.
23 25:2-30. Defenses, liability and protection of transferee.
25:2-31. Extinguishment of cause of action.
25 25:2-32. Supplementary provisions.
25:2-33. Uniformity of application and construction.
27 25:2-34. Laws repealed.

29 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

- 25:2-20. Short title.
31 This article shall be known and may be cited as the "Uniform
Fraudulent Transfer Act."
33 Source: New.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted February 8, 1988.

² Senate SLI committee amendments adopted May 9, 1988.

1 25:2-21. Definitions: A to H.

As used in this article:

3 "Affiliate" means:

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

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

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

13 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
15 indirectly owns, controls, or holds with power to vote, 20% or
more of the outstanding voting securities of the debtor, other
17 than a person who holds the securities.

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

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

23 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

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

29 "Asset" means property of a debtor, but the term does not
include:

31 a. Property to the extent it is encumbered by a valid lien;

33 b. Property to the extent it is generally exempt under
nonbankruptcy law; or

35 c. An interest in property held in tenancy by the entireties to
the extent it is not subject to process by a creditor holding a
claim against only one tenant.

37 "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,
39 secured, or unsecured.

1 "Creditor" means a person who has a claim.

"Debt" means liability on a claim.

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

Source: R.S. 25:2-7.

5 25:2-22. Definitions: I to Z.

As used in this article:

7 "Insider" includes:

a. If the debtor is an individual,

9 (1) A relative of the debtor or of a general partner of the debtor;

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

13 (3) A general partner in a partnership described in paragraph (2) of subsection a. of this definition; or

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

b. If the debtor is a corporation,

17 (1) A director of the debtor;

(2) An officer of the debtor;

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

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

21 (5) A general partner in a partnership described in paragraph (4) of subsection b. of this definition; or

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

25 c. If the debtor is a partnership,

(1) A general partner in the debtor;

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

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

31 (4) A general partner in a partnership described in paragraph (3) of subsection c. of this definition; or

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

35 d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

37 "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and
39 includes a security interest created by agreement, a judicial lien

1 obtained by legal or equitable process or proceedings, a
common-law lien, or a statutory lien.

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

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

9 "Relative" means an individual related by consanguinity
within the third degree as determined by the common law, a
11 spouse, or an individual related to a spouse within the third
degree as so determined, and includes an individual in an
13 adoptive relationship within the third degree.

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

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

Source: New.

23 25:2-23. Insolvency.

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

b. A debtor who is generally not paying his debts as they
27 become due is presumed to be insolvent.

c. A partnership is insolvent under subsection a. of this
29 section if the sum of the partnership's debts is greater than the
aggregate, at a fair valuation, of all of the partnership's assets
31 and the sum of the excess of the value of each general partner's
nonpartnership assets over the partner's nonpartnership debts.

d. Assets under this section do not include property that has
33 been transferred, concealed, or removed with intent to hinder,
35 delay, or defraud creditors or that has been transferred in a
manner making the transfer voidable under this article.

e. Debts under this section do not include an obligation to the
37 extent it is secured by a valid lien on property of the debtor not
39 included as an asset.

1 Source: R.S. 25:2-8.

25:2-24. Value.

3 a. Value is given for a transfer or an obligation if, in
4 exchange for the transfer or obligation, property is transferred
5 or an antecedent debt is secured or satisfied, but value does not
6 include an unperformed promise made otherwise than in the
7 ordinary course of the promisor's business to furnish support to
8 the debtor or another person.

9 b. For the purposes of subsection b. of R.S. 25:2-25 and
10 R.S. 25:2-27, a person gives a reasonably equivalent value if the
11 person acquires an interest of the debtor in an asset pursuant to
12 a regularly conducted, noncollusive foreclosure sale or execution
13 of a power of sale for the acquisition or disposition of the
14 interest of the debtor upon default under a mortgage, deed of
15 trust, or security agreement.

16 c. A transfer is made for present value if the exchange
17 between the debtor and the transferee is intended by them to be
18 contemporaneous and is in fact substantially contemporaneous.

19 Source: R.S. 25:2-9.

20 25:2-25. Transfers fraudulent as to present and future
21 creditors.

22 A transfer made or obligation incurred by a debtor is
23 fraudulent as to a creditor, whether the creditor's claim arose
24 before or after the transfer was made or the obligation was
25 incurred, if the debtor made the transfer or incurred the
26 obligation:

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

29 b. Without receiving a reasonably equivalent value in
30 exchange for the transfer or obligation, and the debtor:

31 (1) Was engaged or was about to engage in a business or a
32 transaction for which the remaining assets of the debtor were
33 unreasonably small in relation to the business or transaction; or

34 (2) Intended to incur, or believed or reasonably should have
35 believed that the debtor would incur, debts beyond the debtor's
36 ability to pay as they become due.

37 Source: R.S. 25:2-11; R.S. 25:2-12; R.S. 25:2-13.

25:2-26. Factors in determining fraudulent intent.

38 In determining actual intent under subsection a. of

1 R.S. 25:2-25 consideration may be given, among other factors,
to whether:

- 3 a. The transfer or obligation was to an insider;
- b. The debtor retained possession or control of the property
5 transferred after the transfer;
- c. The transfer or obligation was disclosed or concealed;
- 7 d. Before the transfer was made or obligation was incurred,
the debtor had been sued or threatened with suit;
- 9 e. The transfer was of substantially all the debtor's assets;
- f. The debtor absconded;
- 11 g. The debtor removed or concealed assets;
- h. The value of the consideration received by the debtor was
13 reasonably equivalent to the value of the asset transferred or
the amount of the obligation incurred;
- 15 i. The debtor was insolvent or became insolvent shortly after
the transfer was made or the obligation was incurred;
- 17 j. The transfer occurred shortly before or shortly after a
substantial debt was incurred; and
- 19 k. The debtor transferred the essential assets of the business
to a lienor who transferred the assets to an insider of the debtor.

21 Source: R.S. 25:2-13.

25:2-27. Transfers fraudulent as to present creditors.

23 a. A transfer made or obligation incurred by a debtor is
fraudulent as to a creditor whose claim arose before the
25 transfer was made or the obligation was incurred if the debtor
made the transfer or incurred the obligation without receiving a
27 reasonably equivalent value in exchange for the transfer or
obligation and the debtor was insolvent at that time or the
29 debtor became insolvent as a result of the transfer or obligation.

b. A transfer made by a debtor is fraudulent as to a creditor
31 whose claim arose before the transfer was made if the transfer
was made to an insider for an antecedent debt, the debtor was
33 insolvent at that time, and the insider had reasonable cause to
believe that the debtor was insolvent.

35 Source: R.S. 25:2-10.

25:2-28. When transfer is made or obligation incurred.

37 For the purposes of this article:

- a. A transfer is made:
39 (1) With respect to an asset that is real property other than a

1 fixture, but including the interest of a seller or purchaser under
2 a contract for the sale of the asset, when the transfer is so far
3 perfected that a good-faith purchaser of the asset from the
4 debtor against whom applicable law permits the transfer to be
5 perfected cannot acquire an interest in the asset that is superior
6 to the interest of the transferee; and

7 (2) With respect to an asset that is not real property or that is
8 a fixture, when the transfer is so far perfected that a creditor
9 on a simple contract cannot acquire a judicial lien otherwise
10 than under this article that is superior to the interest of the
11 transferee;

12 b. If applicable law permits the transfer to be perfected as
13 provided in subsection a. of this section and the transfer is not
14 so perfected before the commencement of an action for relief
15 under this article, the transfer is deemed made immediately
16 before the commencement of the action;

17 c. If applicable law does not permit the transfer to be
18 perfected as provided in subsection a. of this section, the
19 transfer is made when it becomes effective between the debtor
20 and the transferee;

21 d. A transfer is not made until the debtor has acquired rights
22 in the asset transferred;

23 e. An obligation is incurred:

- 24 (1) If oral, when it becomes effective between the parties; or
25 (2) If evidenced by a writing, when the writing executed by
26 the obligor is delivered to or for the benefit of the obligee.

27 Source: New.

28 25:2-29. Remedies of creditors.

29 a. In an action for relief against a transfer or obligation
30 under this article, a creditor, subject to the limitations in R.S.
31 25:2-30, may obtain:

32 (1) Avoidance of the transfer or obligation to the extent
33 necessary to satisfy the creditor's claim;

34 (2) An attachment or other provisional remedy against the
35 asset transferred or other property of the transferee in
36 accordance with the procedure prescribed by Chapter 26 of Title
37 2A of the New Jersey Statutes and by Rule 4:60 et seq. of the
38 Rules Governing the Courts of the State of New Jersey;

39 (3) Subject to applicable principles of equity and in

1 accordance with applicable rules of civil procedure,

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

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

(c) Any other relief the circumstances may require.

7 b. 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.

9 Source: R.S. 25:2-15 amended 1953, c. 25, s. 1; R.S. 25:2-16
11 amended 1953, c. 25, s. 2.

25:2-30. Defenses, liability and protection of transferee.

13 a. A transfer or obligation is not voidable under subsection a. of R.S. 25:2-25 against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

17 b. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph
19 (1) of subsection a. of R.S. 25:2-29, the creditor may recover judgment for the value of the asset transferred, as adjusted
21 under subsection c. of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment
23 may be entered against:

(1) the first transferee of the asset or the person for whose
25 benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith
27 transferee who took for value or from any subsequent transferee.

c. If the judgment under subsection b. of this section is based
29 upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the
31 transfer, subject to adjustment as the equities may require.

d. Notwithstanding voidability of a transfer or an obligation
33 under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or
35 obligation, to

(1) A lien on or a right to retain, any interest in the asset
37 transferred;

(2) Enforcement of any obligation incurred; or

39 (3) A reduction in the amount of the liability on the judgment.

1 e. A transfer is not voidable under subsection b. of
R.S. 25:2-25 or R.S. 25:2-27 if the transfer results from:

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

5 (2) Enforcement of a security interest in compliance with
Article 9 of the Uniform Commercial Code. N.J.S. 12A:9-101
7 et seq.

f. A transfer is not voidable under subsection b. of
9 R.S. 25:2-27:

11 (1) 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;

13 (2) If made in the ordinary course of business or financial
affairs of the debtor and the insider; or

15 (3) If made pursuant to a good-faith effort to rehabilitate the
debtor and the transfer secured present value given for that
17 purpose as well as an antecedent debt of the debtor.

Source: R.S. 25:2-15 amended 1953, c. 25, s. 1.

19 25:2-31. Extinguishment of cause of action.

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

23 a. Under subsection a. of R.S. 25:2-25, within four years
after the transfer was made or the obligation was incurred or, if
25 later, within one year after the transfer or obligation was or
could reasonably have been discovered by the claimant;

27 b. Under subsection b. of R.S. 25:2-25 or subsection a. of
R.S. 25:2-27, within four years after the transfer was made or
29 the obligation was incurred; or

c. Under subsection b. of R.S. 25:2-27, within one year after
31 the transfer was made or the obligation was incurred.

Source: New.

33 25:2-32. Supplementary provision.

Unless displaced by the provisions of this article, the
35 principles of law and equity, including the law merchant and the
law relating to principal and agent, estoppel, laches, fraud,
37 misrepresentation, duress, coercion, mistake, insolvency, or
other validating or invalidating cause, supplement its provisions.

39 Source: R.S. 25:2-17.

1 25:2-33. Uniformity of application and construction.

2 This article shall be applied and construed to effectuate its
3 general purpose to make uniform the law with respect to the
subject of this article among states enacting it.

5 Source: New.

25:2-34. Laws repealed.

7 The following are repealed:

R.S. 25:2-7 through R.S. 25:2-19 inclusive.

9 ¹N.J.S. 14A:14-10 ²[is] through N.J.S. 14A:14-12, inclusive,
are² repealed.¹

11 Source: New.

2. N.J.S. 3B:9-9 is amended to read as follows:

13 3B:9-9. When right to disclaim is barred. The right of a person
to disclaim property or any interest therein is barred, if before
15 the expiration of the period of time in which he is permitted to
disclaim:

17 a. The property or interest is seized under judicial process
issued against him; or

19 b. He accepts or exercises control as beneficial owner over
all or any part of the property or interest; or

21 c. He voluntarily transfers or encumbers or contracts to
transfer or encumber all or any part of the property or interest;
23 or

d. He disclaims or attempts to disclaim all or any part of the
25 property or interest in fraud of his creditors as set forth in the
["Uniform Fraudulent Conveyance Law" (R.S. 25:2-7 et seq.)]
27 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or

e. He executes a written waiver of his right to disclaim.

29 (cf: N.J.S. 38:9-9)

3. Section 9 of P.L. 1979, c. 492 (C. 46:2E-9) is amended to
31 read as follows:

9. The right of a person to disclaim property or any interest
33 therein is barred if the property or interest is seized under
judicial process issued against the person before the expiration
35 of the period in which he is permitted to disclaim; or if before
the expiration of the period in which he is permitted to disclaim,
37 the person (1) accepts or exercises control as beneficial owner
over all or any part of such property or interest; or (2)
39 voluntarily transfers or encumbers or contracts to transfer or

1 encumber all or any part of such property or interest; or (3)
 2 disclaims or attempts to disclaim all or any part of such
 3 property or interest in fraud of his creditors as set forth in the
 4 [Uniform Fraudulent Conveyance Law (R.S. 25:2-7 et seq.)]
 5 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or (4)
 6 executes a written waiver of the right to disclaim.
 7 (cf: P.L. 1979, c. 492, s. 9)

8 4. This act shall take effect January 1 next following
 9 enactment.

11 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES
 12 CHAPTER 2
 13 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT
 14 Schedule of Allocations of Source Material

15	Source		Revised
17	Sections		Sections
	R.S. 25:2-7		25:2-21
19	R.S. 25:2-8		25:2-23
	R.S. 25:2-9		25:2-24
21	R.S. 25:2-10		25:2-27
	R.S. 25:2-11		25:2-25
23	R.S. 25:2-12		25:2-25
	R.S. 25:2-13		25:2-25
25			25:2-26
	R.S. 25:2-14		Not enacted
27	R.S. 25:2-15	As am. L. 1953, c. 25, s. 1	25:2-29
			25:2-30
29	R.S. 25:2-16	As am. L. 1953, c. 25, s. 2	25:2-29
	R.S. 25:2-17		25:2-32
31	R.S. 25:2-18		Not enacted
	R.S. 20:2-19		Not enacted

33

35 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES
 36 CHAPTER 2
 37 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT
 Treatment of Source Material

	Revised Section	Source	Treatment of Source
1		Source	Treatment of Source
3	25:2-20	New	Derived from section 12 of UFTA (1984)
5	25:2-21	R.S. 25:2-7	Revised section derived from source, and section 1 of UFTA (1984)
7			
9	Revised Section	Source	Treatment of Source
	25:2-22	New	Derived from section 1 of UFTA (1984) and 11 U.S.C. § 101
11			
13	25:2-23	R.S. 25:2-8	Revised section derived from source and section 2 of UFTA (1984) and 11 U.S.C. § 101
15			
	25:2-24	R.S. 25:2-9	Revised section derived from source and section 3 of UFTA (1984)
17			
19	25:2-25	R.S. 25:2-11	Revised section derived from sources and section 4 of UFTA (1984)
		R.S. 25:2-12	
21		R.S. 25:2-13	Revised section derived from source and section 4 of UFTA (1984)
	25:2-26	R.S. 25:2-13	
23			
25	25:2-27	R.S. 25:2-10	Revised section derived from source and section 5 of UFTA (1984) and 11 U.S.C. § 547
27			
	25:2-28	New	Derived from section 6 of UFTA (1984) and 11 U.S.C. § 548
29			
31	25:2-29	R.S. 25:2-15	Revised section derived from sources and section 7 of UFTA (1984)
		R.S. 25:2-16	
33			
	25:2-30	R.S. 25:2-15	Revised section derived from source and section 8 of UFTA (1984)
35			
37	25:2-31	New	Derived from section 9 of UFTA (1984)
39	25:2-32	R.S. 25:2-17	Revised section derived from source and section 10 of

1			UFTA (1984)
	25:2-33	New	Derived from section 11 of
3			UFTA (184)
	25:2-34	New	Laws repealed
5			

7
CIVIL JUSTICE
Property and Estates

9
The "Uniform Fraudulent Transfer Act."

ASSEMBLY, No. 1265
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman RILEY

1 AN ACT revising the law concerning fraudulent transfers of real
property and personal property, enacting Article 3 to Chapter
3 2 of Title 25 of the Revised Statutes, and amending N.J.S.
3B:9-9 and P.L. 1979, c. 492.

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BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

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TITLE 25

CHAPTER 2

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29 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

25:2-20. Short title.

31 This article shall be known and may be cited as the "Uniform
Fraudulent Transfer Act."

33 Source: New.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 25:2-21. Definitions: A to H.

As used in this article:

3 "Affiliate" means:

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

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

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

13 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
15 indirectly owns, controls, or holds with power to vote, 20% or
more of the outstanding voting securities of the debtor, other
17 than a person who holds the securities,

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

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

23 c. A person whose business is operated by the debtor under a
lease or other agreement, or a person substantially an of whose
in assets are controlled by the debtor; or

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

29 "Asset" means property of a debtor, but the term does not
include:

31 a. Property to the extent it is encumbered by a valid lien;

33 b. Property to the extent it is generally exempt under
nonbankruptcy law; or

35 c. An interest in property held in tenancy by the entireties to
the extent it is not subject to process by a creditor holding a
claim against only one tenant.

37 "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,
39 secured, or unsecured.

"Creditor" means a person who has a claim.

1 "Debt" means liability on a claim.

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

3 Source: R.S. 25:2-7.

25:2-22. Definitions: I to Z.

5 As used in this article:

"Insider" includes:

7 a. If the debtor is an individual,

(1) A relative of the debtor or of a general partner of the
9 debtor;

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

11 (3) A general partner in a partnership described in clause (2)
of subsection a. of this definition; or

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

15 b. If the debtor is a corporation,

(1) A director of the debtor;

17 (2) An officer of the debtor;

(3) A person in control of the debtor;

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

(5) A general partner in a partnership described in clause (4)
21 of subsection b. of this definition; or

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

c. If the debtor is a partnership,

25 (1) A general partner in the debtor;

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

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

(4) A general partner in a partnership described in clause (3)
31 of subsection c. of this definition; or

(5) A person in control of the debtor;

33 d. An affiliate, or an insider of an affiliate as if the affiliate
were the debtor; and

35 e. A managing agent of the debtor.

"Lien" means a charge against or an interest in property to
37 secure payment of a debt or performance of an obligation, and
includes a security interest created by agreement, a judicial lien
39 obtained by legal or equitable process or proceedings, a
common-law lien, or a statutory lien.

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

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

7 "Relative" means an individual related by consanguinity
within the third degree as determined by the common law, a
9 spouse, or an individual related to a spouse within the third
degree as so determined, and includes an individual in an
11 adoptive relationship within the third degree.

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

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

Source: New.

21 25:2-23. Insolvency.

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

b. A debtor who is generally not paying his debts as they
25 become due is presumed to be insolvent.

c. A partnership is insolvent under subsection a. of this
27 section if the sum of the partnership's debts is greater than the
aggregate, at a fair valuation, of all of the partnership's assets
29 and the sum of the excess of the value of each general partner's
nonpartnership assets over the partner's nonpartnership debts.

31 d. Assets under this section do not include property that has
been transferred, concealed, or removed with intent to hinder,
33 delay, or defraud creditors or that has been transferred in a
manner making the transfer voidable under this article.

35 e. 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
37 included as an asset.

Source: R.S. 25:2-8.

39 25:2-24. Value.

1 a. Value is given for a transfer or an obligation if, in
 2 exchange for the transfer or obligation, property is transferred
 3 or an antecedent debt is secured or satisfied, but value does not
 4 include an unperformed promise made otherwise than in the
 5 ordinary course of the promisor's business to furnish support to
 6 the debtor or another person.

7 b. For the purposes of subsection b. of R.S. 25:2-25 and R.S.
 8 25:2-27, a person gives a reasonably equivalent value if the
 9 person acquires an interest of the debtor in an asset pursuant to
 10 a regularly conducted, noncollusive foreclosure sale or execution
 11 of a power of sale for the acquisition or disposition of the
 12 interest of the debtor upon default under a mortgage, deed of
 13 trust, or security agreement.

14 c. A transfer is made for present value if the exchange
 15 between the debtor and the transferee is intended by them to be
 16 contemporaneous and is in fact substantially contemporaneous.

17 Source: R.S. 25:2-9.

18 25:2-25. Transfers fraudulent as to present and future
 19 creditors.

20 A transfer made or obligation incurred by a debtor is
 21 fraudulent as to a creditor, whether the creditor's claim arose
 22 before or after the transfer was made or the obligation was
 23 incurred, if the debtor made the transfer or incurred the
 24 obligation:

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

27 b. Without receiving a reasonably equivalent value in
 28 exchange for the transfer or obligation, and the debtor:

29 (1) Was engaged or was about to engage in a business or a
 30 transaction for which the remaining assets of the debtor were
 31 unreasonably small in relation to the business or transaction; or

32 (2) Intended to incur, or believed or reasonably should have
 33 believed that the debtor would incur, debts beyond the debtor's
 34 ability to pay as they become due.

35 Source: R.S. 25:2-11; R.S. 25:2-12; R.S. 25:2-13.

25:2-26. Factors in determining fraudulent intent.

36 In determining actual intent under subsection a. of R.S.
 37 25:2-20 consideration may be given, among other factors, to
 38 whether:

39 a. The transfer or obligation was to an insider;

- 1 b. The debtor retained possession or control of the property
transferred after the transfer;
- 3 c. The transfer or obligation was disclosed or concealed;
- 5 d. Before the transfer was made or obligation was incurred,
the debtor had been sued or threatened with suit;
- 7 e. The transfer was of substantially all the debtor's assets;
- 9 f. The debtor absconded;
- 11 g. The debtor removed or concealed assets;
- 13 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;
- 15 i. The debtor was insolvent or became insolvent shortly after
the transfer was made or the obligation was incurred;
- 17 j. The transfer occurred shortly before or shortly after a
substantial debt was incurred; and
- 19 k. The debtor transferred the essential assets of the business
to a lienor who transferred the assets to an insider of the debtor.
Source: R.S. 25:2-13.

21 25:2-27. Transfers fraudulent as to present creditors.

23 a. 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.

27 b. 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.

31 Source: R.S. 25:2-10.

33 25:2-28. When transfer is made or obligation incurred.

35 For the purposes of this article:

37 a. A transfer is made:

39 (1) 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

1 perfected cannot acquire an interest in the asset that is superior
to the interest of the transferee; and

3 (2) 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
5 on a simple contract cannot acquire a judicial lien otherwise
than under this article that is superior to the interest of the
7 transferee;

b. If applicable law permits the transfer to be perfected as
9 provided in subsection a. of this section and the transfer is not
so perfected before the commencement of an action for relief
11 under this article, the transfer is deemed made immediately
before the commencement of the action;

13 c. If applicable law does not permit the transfer to be
perfected as provided in subsection a. of this section, the
15 transfer is made when it becomes effective between the debtor
and the transferee;

17 d. A transfer is not made until the debtor has acquired rights
in the asset transferred;

19 e. An obligation is incurred:

(1) If oral, when it becomes effective between the parties; or

21 (2) If evidenced by a writing, when the writing executed by
the obligor is delivered to or for the benefit of the obligee.

23 Source: New.

25 25:2-29. Remedies of creditors.

a. In an action for relief against a transfer or obligation
27 under this article, a creditor, subject to the limitations in R.S.
25:2-30, may obtain:

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

(2) An attachment or other provisional remedy against the
31 asset transferred or other property of the transferee in
accordance with the procedure prescribed by Chapter 26 of Title
33 2A of the New Jersey Statutes and by Rule 4:60 et seq. of the
Rules Governing the Courts of the State of New Jersey;

35 (3) Subject to applicable principles of equity and in
accordance with applicable rules of civil procedure,

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

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

1 (c) Any other relief the circumstances may require.

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

5 Source: R.S. 25:2-15 amended 1953, c. 25, s. 1; R.S. 25:2-16
amended 1953, c. 25, s. 2.

7 25:2-30. Defenses, liability and protection of transferee.

8 a. A transfer or obligation is not voidable under subsection a.
9 of R.S. 25:2-25 of this article against a person who took in good
faith and for a reasonably equivalent value or against any
11 subsequent transferee or obligee.

12 b. Except as otherwise provided in this section, to the extent
13 a transfer is voidable in an action by a creditor under subsection
a., clause (1) of R.S. 25:2-29 of this article, the creditor may
15 recover judgment for the value of the asset transferred, as
adjusted under subsection c. of this section, or the amount
17 necessary to satisfy the creditor's claim, whichever is less. The
judgment may be entered against:

19 (1) the first transferee of the asset or the person for whose
benefit the transfer was made; or

21 (2) Any subsequent transferee other than a good-faith
transferee who took for value or from any subsequent transferee.

23 c. If the judgment under subsection b. of this section is based
upon the value of the asset transferred, the judgment shall be
25 for an amount equal to the value of the asset at the time of the
transfer, subject to adjustment as the equities may require.

27 d. Notwithstanding voidability of a transfer or an obligation
under this article, a good-faith transferee or obligee is entitled,
29 to the extent of the value given the debtor for the transfer or
obligation, to

31 (1) A lien on or a right to retain any interest in the asset
transferred;

33 (2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

35 e. A transfer is not voidable under subsection b. of R.S.
25:2-25 or R.S. 25:2-27 of this article if the transfer results
37 from:

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

1 (2) Enforcement of a security interest in compliance with
Article 9 of the Uniform Commercial Code, N.J.S. 12A:9-101 et
3 seq.

f. A transfer is not voidable under subsection b. of R.S.
5 25:2-27 of this article:

(1) To the extent the insider gave new value to or for the
7 benefit of the debtor after the transfer was made unless the new
value was secured by a valid lien;

(2) If made in the ordinary course of business or financial
9 affairs of the debtor and the insider; or

11 (3) If made pursuant to a good-faith effort to rehabilitate the
debtor and the transfer secured present value given for that
13 purpose as well as an antecedent debt of the debtor.

Source: R.S. 25:2-15 amended 1953, c. 25, s. 1.

15 25:2-31. Extinguishment of cause of action.

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

19 a. Under subsection a. of R.S. 25:2-25 of this article, within
four years after the transfer was made or the obligation was
21 incurred or, if later, within one year after the transfer or
obligation was or could reasonably have been discovered by the
23 claimant;

b. Under subsection b. of R.S. 25:2-25 or subsection a. of R.S.
25 25:2-27 of this article, within four years after the transfer was
made or the obligation was incurred; or

27 c. Under subsection b. of R.S. 25:2-27 of this article, within
one year after the transfer was made or the obligation was
29 incurred.

Source: New.

31 25:2-32. Supplementary provision.

Unless displaced by the provisions of this article, the
33 principles of law and equity, including the law merchant and the
law relating to principal and agent, estoppel, laches, fraud,
35 misrepresentation, duress, coercion, mistake, insolvency, or
other validating or invalidating cause, supplement its provisions.

37 Source: R.S. 25:2-17.

25:2-33. Uniformity of application and construction.

39 This article shall be applied and construed to effectuate its
general purpose to make uniform the law with respect to the
41 subject of this article among states enacting it.

1 Source: New.

25:2-34. Laws repealed.

3 The following are repealed:

R.S. 25:2-7 through R.S. 25:2-19 inclusive.

5 Source: New.

2. N.J.S. 3B:9-9 is amended to read as follows:

7 3B:9-9. When right to disclaim is barred. The right of a person
to disclaim property or any interest therein is barred, if before
9 the expiration of the period of time in which he is permitted to
disclaim:

11 a. The property or interest is seized under judicial process
issued against him; or

13 b. He accepts or exercises control as beneficial owner over
all or any part of the property or interest; or

15 c. He voluntarily transfers or encumbers or contracts to
transfer or encumber all or any part of the property or interest;

17 or

d. He disclaims or attempts to disclaim all or any part of the
19 property or interest in fraud of his creditors as set forth in the
["Uniform Fraudulent Conveyance Law" (R.S. 25:2-7 et seq.)]
21 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or

e. He executes a written waiver of his right to disclaim.

23 3. Section 9 of P.L. 1979, c. 492 (C. 46:2E-9) is amended to
read as follows:

25 9. The right of a person to disclaim property or any interest
therein is barred if the property or interest is seized under
27 judicial process issued against the person before the expiration
of the period in which he is permitted to disclaim; or if before
29 the expiration of the period in which he is permitted to disclaim,
the person (1) accepts or exercises control as beneficial owner
31 over all or any part of such property or interest; or (2)
voluntarily transfers or encumbers or contracts to transfer or
33 encumber all or any part of such property or interest; or (3)
disclaims or attempts to disclaim all or any part of such
35 property or interest in fraud of his creditors as set forth in the
[Uniform Fraudulent Conveyance Law (R.S. 25:2-7 et seq.)]
37 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or (4)
executes a written waiver of the right to disclaim.

1 4. This act shall take effect January 1 next following
 3 enactment.

5 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES
 6 CHAPTER 2

7 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT
 8 Schedule of Allocations of Source Material

9	Source		Revised
11	Sections		Sections
	R.S. 25:2-7		25:2-21
13	R.S. 25:2-8		25:2-23
	R.S. 25:2-9		25:2-24
15	R.S. 25:2-10		25:2-27
	R.S. 25:2-11		25:2-25
17	R.S. 25:2-12		25:2-25
	R.S. 25:2-13		{ 25:2-25
19			{ 25:2-26
	R.S. 25:2-14		Not enacted
21	R.S. 25:2-15	As am. L. 1953, c. 25, s. 1	{ 25:2-29
			{ 25:2-30
23	R.S. 25:2-16	As am. L. 1953, c. 25, s. 2	25:2-29
	R.S. 25:2-17		25:2-32
25	R.S. 25:2-18		Not enacted
	R.S. 20:2-19		Not enacted

27

29 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES
 30 CHAPTER 2

31 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT
 32 Treatment of Source Material

33	Revised	Source	Treatment of Source
35	Section		
	25:2-20	New	{ Derived from section 12 of UFTA (1984)
37	25:2-21	R.S. 25:2-7	{ Revised section derived from source, and section 1 of UFTA (1984)
39			

1	Revised Section	Source	Treatment of Source
3	25:2-22	New	{ Derived from section 1 of UFTA (1984) and 11 U.S.C. § 101
5	25:2-23	R.S. 25:2-8	{ Revised section derived from source and section 2 of UFTA (1984) and 11 U.S.C. § 101
7			
9	25:2-24	R.S. 25:2-9	{ Revised section derived from source and section 3 of UFTA (1984)
11	25:2-25	R.S. 25:2-11	{ Revised section derived from sources and section 4 of UFTA (1984)
13		R.S. 25:2-12	
		R.S. 25:2-13	
15	25:2-26	R.S. 25:2-13	{ Revised section derived from source and section 4 of UFTA (1984)
17			
	25:2-27	R.S. 25:2-10	{ Revised section derived from source and section 5 of UFTA (1984) and 11 U.S.C. § 547
19			
21	25:2-28	New	{ Derived from section 6 of UFTA (1984) and 11 U.S.C. § 548
23			
	25:2-29	R.S. 25:2-15	{ Revised section derived from sources and section 7 of UFTA (1984)
25		R.S. 25:2-16	
27	25:2-30	R.S. 25:2-15	{ Revised section derived from source and section 8 of UFTA (1984)
29			
	25:2-31	New	{ Derived from section 9 of UFTA (1984)
31			
	25:2-32	R.S. 25:2-17	{ Revised section derived from source and section 10 of UFTA (1984)
33			
35	25:2-33	New	{ Derived from section 11 of UFTA (184)
37	25:2-34	New	Laws repealed

1

STATEMENT

3 This act has been promulgated by the Conference of
Commissioners on Uniform State Laws as a replacement of the
5 Uniform Conveyance Act which was adopted by New Jersey in
1919 and which eventually became R.S. 25:2-7 to R.S. 25:2-19
7 inclusive in our statutes.

The Uniform Fraudulent Transfer Act, R.S. 25:2-20 to R.S.
9 25:2-34 inclusive, applies to transfers of personal property as
well as real property; the word "conveyance" was eliminated
11 from the title because it has a connotation in some states
restricting it to a transfer of personal property. This new act,
13 like the original uniform act, does not purport to cover the
whole law of voidable transfers.

15 The basic structure and approach of the Uniform Fraudulent
Conveyance Act are preserved in the Uniform Fraudulent
17 Transfer Act. There are two sections in the new act delineating
what transfers and obligations are fraudulent. R.S. 25:2-25 is an
19 adaptation of three sections of the Uniform Fraudulent
Conveyance Act; subsection a. of R.S. 25:2-27 is an adaptation
21 of another section of the Uniform Fraudulent Conveyance Act;
and subsection b. of R.S. 25:2-27 is new. One section of the
23 Uniform Fraudulent Conveyance Act (R.S. 25:2-14) is not
carried forward into the new act because it is deemed to be
25 redundant in part and in part susceptible of inequitable
application. Both acts declare a transfer made or an obligation
27 incurred with actual intent to hinder, delay, or defraud creditors
to be fraudulent. Both acts render a transfer made or obligation
29 incurred without adequate consideration to be constructively
fraudulent--i. e., without regard to the actual intent of the
31 parties--under one of the following conditions:

a. The debtor was left by the transfer or obligation with
33 unreasonably small assets for a transaction or the business in
which he was engaged;

35 b. The debtor intended to incur, or believed that he would
incur, more debts than he would be able to pay; or

37 c. The debtor was insolvent at the time or as a result of the
transfer or obligation.

1 As under the original Uniform Fraudulent Conveyance Act a
2 transfer or obligation that is constructively fraudulent because
3 insolvency concurs with or follows failure to receive adequate
4 consideration is voidable only by a creditor in existence at the
5 time the transfer occurs or the obligation is incurred. Either an
6 existing or subsequent creditor may avoid a transfer or
7 obligation for inadequate consideration when accompanied by
8 the financial condition or the mental state specified in R.S.
9 25:2-25.

10 Reasonably equivalent value is required in order to constitute
11 adequate consideration under the revised act. The revision
12 follows the Bankruptcy Code, 11 U.S.C. § 101 et seq., Pub. Law
13 95-598, 92 Stat. 2549, in eliminating good faith on the part of
14 the transferee or obligee as an issue in the determination of
15 whether adequate consideration is given by a transferee or
16 obligee. The new act, like the Bankruptcy Code, allows the
17 transferee or obligee to show good faith in defense after a
18 creditor establishes that a fraudulent transfer has been made or
19 a fraudulent obligation has been incurred. Thus a showing by a
20 defendant that a reasonable equivalent has been given in good
21 faith for a transfer or obligation is a complete defense although
22 the debtor is shown to have intended to hinder, delay, or defraud
23 creditors.

24 A good faith transferee or obligee who has given less than a
25 reasonable equivalent is nevertheless allowed a reduction in
26 liability to the extent of the value given. The new act, like the
27 Bankruptcy Code, eliminates the provision of the Uniform
28 Fraudulent Conveyance Act that enables a creditor to attack a
29 security transfer on the ground that the value of the property
30 transferred is disproportionate to the debt secured. The premise
31 of the new act is that the value of the interest transferred for
32 security is measured by and thus corresponds exactly to the debt
33 secured. Foreclosure of a debtor's interest by a regularly
34 conducted, noncollusive sale on default under a mortgage or
35 other security agreement may not be avoided under the act as a
36 transfer for less than a reasonably equivalent value.

37 The definition of insolvency under the act is adapted from the
38 definition of the terms in the Bankruptcy Code, 11 U.S.C. § 101,
39 Pub. Law 95-598, 92 Stat. 2549. Insolvency is presumed from
proof of a failure generally to pay debts as they become due.

1 The new act adds a new category of fraudulent transfer,
2 namely, a preferential transfer by an insolvent insider to a
3 creditor who had reasonable cause to believe the debtor to be
4 insolvent. An insider is defined in much the same way as in the
5 Bankruptcy Code, 11 U.S.C. § 101, Pub. Law 95-598, 92 Stat.
6 2549, and includes a relative, also defined as in the Bankruptcy
7 Code, 11 U.S.C. § 101, Pub. Law 95-598, 92 Stat. 2549, a
8 director or officer of a corporate debtor, a partner, or a person
9 in control of a debtor. This provision is available only to an
10 existing creditor. Its premise is that an insolvent debtor is
11 obliged to pay debts to creditors not related to him before
12 paying those who are insiders.

13 The new act omits any provision directed particularly at
14 transfers or obligations of insolvent partnership debtors. Under
15 R.S. 25:2-14 of the Uniform Fraudulent Conveyance Act any
16 transfer made or obligation incurred by an insolvent partnership
17 to a partner is fraudulent without regard to intent or adequacy
18 of consideration. So categorical a condemnation of a
19 partnership transaction with a partner may unfairly prejudice
20 the interests of a partner's separate creditors. The new act
21 also omits as redundant a provision in the original act that
22 makes fraudulent a transfer made or obligation incurred by an
23 insolvent partnership for less than a fair consideration to the
24 partnership.

25 R.S. 25:2-29 lists the remedies available to creditors under
26 the new act. It eliminates as unnecessary and confusing a
27 differentiation made in the original act between the remedies
28 available to holders of matured claims and those holding
29 unmatured claims. Since promulgation of the Uniform
30 Fraudulent Conveyance Act the Supreme Court has imposed
31 restrictions on the availability and use of prejudgment
32 remedies. As a result many states have amended their statutes
33 and rules applicable to these remedies, and it is frequently
34 unclear whether a state's procedures include a prejudgment
35 remedy against a fraudulent transfer or obligation.

36 R.S. 25:2-30 prescribes the measure of liability of a
37 transferee or obligee under the act and enumerates defenses.
38 Defenses against avoidance of a preferential transfer to an
39 insider under subsection b. of R.S. 25:2-27 include an adaptation

1 of defenses available under subsection (c), clauses (2) and (4) of
2 § 547 of the Bankruptcy Code, 11 U.S.C. § 547, Pub. Law
3 95-598, 92 Stat. 2597, when such a transfer is sought to be
4 avoided as a preference by the trustee in bankruptcy. In
5 addition a preferential transfer may be justified when shown to
6 be made pursuant to a good-faith effort to stave off forced
7 liquidation and rehabilitate the debtor. R.S. 25:2-30 also
8 precludes avoidance, as a constructively fraudulent transfer, of
9 the termination of a lease on default or the enforcement of a
10 security interest in compliance with Article 9 of the Uniform
11 Commercial Code, N.J.S. 12A:9-101 et seq.

12 The new act includes a new section specifying when a transfer
13 is made or an obligation is incurred. The section specifying the
14 time when a transfer occurs is adapted from subsection (d) of §
15 548 of the Bankruptcy Code, 11 U.S.C. § 548, Pub. Law 95-598,
16 92 Stat. 2600. Its premise is that if the law prescribes a mode
17 for making the transfer a matter of public record or notice, it is
18 not deemed to be made for any purpose under the act until it has
19 become such a matter of record or notice.

20 The new act also includes a statute of limitations that bars
21 the right rather than the remedy on expiration of the statutory
22 periods prescribed. The law governing limitations on actions to
23 avoid fraudulent transfers among the states is unclear and full
24 of diversity. The act recognizes that laches and estoppel may
25 operate to preclude a particular creditor from pursuing a
26 remedy against a fraudulent transfer or obligation even though
27 the statutory period of limitations has not run.

29

CIVIL JUSTICE

31

Property and Estates

33

The "Uniform Fraudulent Transfer Act."

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1265

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 9, 1988

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Assembly Bill No. 1265 (1R).

This bill repeals the "uniform fraudulent conveyance law," R.S. 25:2-7 et seq., which was adopted by New Jersey in 1919, and replaces it with the "Uniform Fraudulent Transfer Act" which was approved by the National Conference of Commissioners on Uniform State Laws in 1984. The bill concerns fraudulent transfers of real property and personal property.

In regard to present and future creditors, the bill declares a transfer made or obligation incurred with actual intent to hinder, delay, or defraud creditors to be fraudulent. Also, a transfer made or obligation incurred without receiving sufficient consideration is constructively fraudulent (i.e., without regard to the actual intent of the parties) under one of the following conditions: (a) the debtor was left by the transfer or obligation with unreasonably small assets for a transaction or the business in which he was engaged; (b) the debtor intended to incur, or believed that he would incur, more debts than he would be able to pay; or (c) the debtor was insolvent at the time or as a result of the transfer or obligation. As under the "uniform fraudulent conveyance law," a transfer or obligation that is constructively fraudulent because insolvency concurs with or follows failure to receive sufficient consideration is voidable only by a creditor in existence at the time the transfer occurs or the obligation is incurred.

Reasonably equivalent value is required in order to constitute sufficient consideration under the bill.

In comparison to the current law, this bill eliminates good faith on the part of the transferee or obligee as an issue in the determination of whether sufficient consideration is given by a transferee or obligee. However, after a fraudulent transfer has been

made or a fraudulent obligation has been incurred, a showing by a transferee or obligee that sufficient consideration has been given in good faith for a transfer or obligation is a complete defense even though the debtor is shown to have intended to hinder, delay, or defraud creditors. A good faith transferee or obligee who has given less than sufficient consideration is nevertheless allowed a reduction in liability to the extent of the value given.

The bill invalidates preferential transfers to an insider to satisfy an antecedent debt when the debtor was insolvent and the insider had reason to believe that the debtor was insolvent. An insider is defined in much the same way as in the federal Bankruptcy Code, and includes a relative, a director or officer of a corporate debtor, a partner, or a person in control of the debtor. This provision is only available to an existing creditor. The premise of this provision is that an insolvent debtor is obliged to pay debts to creditors not related or associated with him before paying those who are insiders.

The bill uses a balance sheet test for insolvency in which the value of the debtor's liabilities are compared to the value of the debtor's assets or an equitable test of insolvency in which a debtor is insolvent when the debtor generally is not paying his debts as they mature.

Defrauded creditors may pursue one or more of several options under the bill, depending upon the posture of their claims. The creditor may request that the court set aside the fraudulent transfer, enjoin the transferee currently holding the property from removing it from the reach of the creditor, or appoint a custodian of the property.

The bill also provides a statute of limitations that bars the right rather than the remedy on expiration of the statutory periods prescribed.

Finally, the bill repeals N.J.S. 14A:14-10 through N.J.S. 14A:14-12, inclusive, the sections of the corporate law which deal with fraudulent transfers.

[FIRST REPRINT]
ASSEMBLY, No. 1265

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman RILEY

1 AN ACT revising the law concerning fraudulent transfers of real
property and personal property, enacting Article 3 to Chapter
3 2 of Title 25 of the Revised Statutes, and amending N.J.S.
3B:9-9 and P.L. 1979, c. 492.

5

BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

1.

9

TITLE 25
CHAPTER 2

11

ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

13

25:2-20. Short title.

15

25:2-21. Definitions: A to H.

17

25:2-22. Definitions: I to Z.

19

25:2-23. Insolvency.

21

25:2-24. Value.

23

25:2-25. Transfers fraudulent as to present and future
creditors.

25

25:2-26. Factors in determining fraudulent intent.

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25:2-27. Transfers fraudulent as to present creditors.

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25:2-28. When transfer is made or obligation incurred.

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25:2-29. Remedies of creditors.

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25:2-30. Defenses, liability and protection of transferee.

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25:2-31. Extinguishment of cause of action.

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25:2-32. Supplementary provisions.

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25:2-33. Uniformity of application and construction.

41

25:2-34. Laws repealed.

43

ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

45

25:2-20. Short title.

47

This article shall be known and may be cited as the "Uniform
Fraudulent Transfer Act."

49

Source: New.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
Assembly AFI committee amendments adopted February 8, 1988.

1 25:2-21. Definitions: A to H.

As used in this article:

3 "Affiliate" means:

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

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

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

13 b. A corporation 20% or more of whose outstanding voting
securities are directly or indirectly owned, controlled, or held
15 with power to vote, by the debtor or a person who directly or
indirectly owns, controls, or holds with power to vote, 20% or
17 more of the outstanding voting securities of the debtor, other
than a person who holds the securities,

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

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

23 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

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

29 "Asset" means property of a debtor, but the term does not
include:

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

31 b. Property to the extent it is generally exempt under
nonbankruptcy law; or

33 c. An interest in property held in tenancy by the entireties to
the extent it is not subject to process by a creditor holding a
35 claim against only one tenant.

37 "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,
39 secured, or unsecured.

"Creditor" means a person who has a claim.

1 "Debt" means liability on a claim.

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

3 Source: R.S. 25:2-7.

25:2-22. Definitions: I to Z.

5 As used in this article:

"Insider" includes:

7 a. If the debtor is an individual,

(1) A relative of the debtor or of a general partner of the
9 debtor;

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

11 (3) A general partner in a partnership described in paragraph
(2) of subsection a. of this definition; or

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

15 b. If the debtor is a corporation,

(1) A director of the debtor;

17 (2) An officer of the debtor;

(3) A person in control of the debtor;

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

(5) A general partner in a partnership described in paragraph
21 (4) of subsection b. of this definition; or

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

c. If the debtor is a partnership,

25 (1) A general partner in the debtor;

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

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

(4) A general partner in a partnership described in paragraph
31 (3) of subsection c. of this definition; or

(5) A person in control of the debtor;

33 d. An affiliate, or an insider of an affiliate as if the affiliate
were the debtor; and

35 e. A managing agent of the debtor.

"Lien" means a charge against or an interest in property to
37 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
39 common-law lien, or a statutory lien.

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

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

7 "Relative" means an individual related by consanguinity
within the third degree as determined by the common law, a
9 spouse, or an individual related to a spouse within the third
degree as so determined, and includes an individual in an
11 adoptive relationship within the third degree.

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

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

Source: New.

21 25:2-23. Insolvency.

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

b. A debtor who is generally not paying his debts as they
25 become due is presumed to be insolvent.

c. A partnership is insolvent under subsection a. of this
27 section if the sum of the partnership's debts is greater than the
aggregate, at a fair valuation, of all of the partnership's assets
29 and the sum of the excess of the value of each general partner's
nonpartnership assets over the partner's nonpartnership debts.

31 d. Assets under this section do not include property that has
been transferred, concealed, or removed with intent to hinder,
33 delay, or defraud creditors or that has been transferred in a
manner making the transfer voidable under this article.

35 e. 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
37 included as an asset.

Source: R.S. 25:2-8.

1 25:2-24. Value.

3 a. Value is given for a transfer or an obligation if, in
 5 exchange for the transfer or obligation, property is transferred
 7 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.

9 b. For the purposes of subsection b. of R.S. 25:2-25 and R.S.
 11 25:2-27, a person gives a reasonably equivalent value if the
 13 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.

15 c. A transfer is made for present value if the exchange
 17 between the debtor and the transferee is intended by them to be
 contemporaneous and is in fact substantially contemporaneous.

Source: R.S. 25:2-9.

19 25:2-25. Transfers fraudulent as to present and future
 creditors.

21 A transfer made or obligation incurred by a debtor is
 23 fraudulent as to a creditor, whether the creditor's claim arose
 before or after the transfer was made or the obligation was
 25 incurred, if the debtor made the transfer or incurred the
 obligation:

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

29 b. Without receiving a reasonably equivalent value in
 exchange for the transfer or obligation, and the debtor:

31 (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

33 (2) Intended to incur, or believed or reasonably should have
 35 believed that the debtor would incur, debts beyond the debtor's
 ability to pay as they become due.

Source: R.S. 25:2-11; R.S. 25:2-12; R.S. 25:2-13.

37 25:2-26. Factors in determining fraudulent intent.

39 In determining actual intent under subsection a. of R.S.
 25:2-25 consideration may be given, among other factors, to
 whether:

41 a. The transfer or obligation was to an insider;

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

3 c. The transfer or obligation was disclosed or concealed;

5 d. Before the transfer was made or obligation was incurred,
the debtor had been sued or threatened with suit;

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

7 f. The debtor absconded;

7 g. The debtor removed or concealed assets;

9 h. The value of the consideration received by the debtor was
reasonably equivalent to the value of the asset transferred or
11 the amount of the obligation incurred;

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

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

17 k. The debtor transferred the essential assets of the business
to a lienor who transferred the assets to an insider of the debtor.

Source: R.S. 25:2-13.

19 25:2-27. Transfers fraudulent as to present creditors.

21 a. A transfer made or obligation incurred by a debtor is
fraudulent as to a creditor whose claim arose before the
23 transfer was made or the obligation was incurred if the debtor
made the transfer or incurred the obligation without receiving a
25 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.

27 b. A transfer made by a debtor is fraudulent as to a creditor
whose claim arose before the transfer was made if the transfer
29 was made to an insider for an antecedent debt, the debtor was
insolvent at that time, and the insider had reasonable cause to
31 believe that the debtor was insolvent.

Source: R.S. 25:2-10.

33 25:2-28. When transfer is made or obligation incurred.

For the purposes of this article:

35 a. A transfer is made:

37 (1) 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
39 perfected that a good-faith purchaser of the asset from the
debtor against whom applicable law permits the transfer to be

1 perfected cannot acquire an interest in the asset that is superior
to the interest of the transferee; and

3 (2) 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
5 on a simple contract cannot acquire a judicial lien otherwise
than under this article that is superior to the interest of the
7 transferee;

b. If applicable law permits the transfer to be perfected as
9 provided in subsection a. of this section and the transfer is not
so perfected before the commencement of an action for relief
11 under this article, the transfer is deemed made immediately
before the commencement of the action;

13 c. If applicable law does not permit the transfer to be
perfected as provided in subsection a. of this section, the
15 transfer is made when it becomes effective between the debtor
and the transferee;

17 d. A transfer is not made until the debtor has acquired rights
in the asset transferred;

19 e. An obligation is incurred:

(1) If oral, when it becomes effective between the parties; or

21 (2) If evidenced by a writing, when the writing executed by
the obligor is delivered to or for the benefit of the obligee.

23 Source: New.

25:2-29. Remedies of creditors.

25 a. In an action for relief against a transfer or obligation
under this article, a creditor, subject to the limitations in R.S.
27 25:2-30, may obtain:

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

(2) An attachment or other provisional remedy against the
31 asset transferred or other property of the transferee in
accordance with the procedure prescribed by Chapter 26 of Title
33 2A of the New Jersey Statutes and by Rule 4:60 et seq. of the
Rules Governing the Courts of the State of New Jersey;

(3) Subject to applicable principles of equity and in
35 accordance with applicable rules of civil procedure,

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

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

1 (c) Any other relief the circumstances may require.

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

5 Source: R.S. 25:2-15 amended 1953, c. 25, s. 1; R.S. 25:2-16
amended 1953, c. 25, s. 2.

7 25:2-30. Defenses, liability and protection of transferee.

8 a. A transfer or obligation is not voidable under subsection a.
9 of R.S. 25:2-25 against a person who took in good faith and for a
reasonably equivalent value or against any subsequent transferee
11 or obligee.

12 b. Except as otherwise provided in this section, to the extent
13 a transfer is voidable in an action by a creditor under paragraph
(1) of subsection a. of R.S. 25:2-29, the creditor may recover
15 judgment for the value of the asset transferred, as adjusted
under subsection c. of this section, or the amount necessary to
17 satisfy the creditor's claim, whichever is less. The judgment
may be entered against:

19 (1) the first transferee of the asset or the person for whose
benefit the transfer was made; or

21 (2) Any subsequent transferee other than a good-faith
transferee who took for value or from any subsequent transferee.

23 c. If the judgment under subsection b. of this section is based
upon the value of the asset transferred, the judgment shall be
25 for an amount equal to the value of the asset at the time of the
transfer, subject to adjustment as the equities may require.

27 d. Notwithstanding voidability of a transfer or an obligation
under this article, a good-faith transferee or obligee is entitled,
29 to the extent of the value given the debtor for the transfer or
obligation, to

31 (1) A lien on or a right to retain any interest in the asset
transferred;

33 (2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

35 e. A transfer is not voidable under subsection b. of R.S.
25:2-25 or R.S. 25:2-27 if the transfer results from:

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

1 (2) Enforcement of a security interest in compliance with
 2 Article 9 of the Uniform Commercial Code, N.J.S. 12A:9-101 et
 3 seq.

4 f. A transfer is not voidable under subsection b. of R.S.
 5 25:2-27:

6 (1) To the extent the insider gave new value to or for the
 7 benefit of the debtor after the transfer was made unless the new
 8 value was secured by a valid lien;

9 (2) If made in the ordinary course of business or financial
 10 affairs of the debtor and the insider; or

11 (3) If made pursuant to a good-faith effort to rehabilitate the
 12 debtor and the transfer secured present value given for that
 13 purpose as well as an antecedent debt of the debtor.

Source: R.S. 25:2-15 amended 1953, c. 25, s. 1.

14 25:2-31. Extinguishment of cause of action.

15 A cause of action with respect to a fraudulent transfer or
 16 obligation under this article is extinguished unless action is
 17 brought:

18 a. Under subsection a. of R.S. 25:2-25, within four years
 19 after the transfer was made or the obligation was incurred or, if
 20 later, within one year after the transfer or obligation was or
 21 could reasonably have been discovered by the claimant;

22 b. Under subsection b. of R.S. 25:2-25 or subsection a. of R.S.
 23 25:2-27, within four years after the transfer was made or the
 24 obligation was incurred; or

25 c. Under subsection b. of R.S. 25:2-27, within one year after
 26 the transfer was made or the obligation was incurred.

Source: New.

27 25:2-32. Supplementary provision.

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

33 Source: R.S. 25:2-17.

34 25:2-33. Uniformity of application and construction.

35 This article shall be applied and construed to effectuate its
 36 general purpose to make uniform the law with respect to the
 37 subject of this article among states enacting it.

Source: New.

1 25:2-34. Laws repealed.

The following are repealed:

3 R.S. 25:2-7 through R.S. 25:2-19 inclusive.

¹N.J.S. 14A:14-10 is repealed.¹

5 Source: New.

2. N.J.S. 3B:9-9 is amended to read as follows:

7 3B:9-9. When right to disclaim is barred. The right of a person
to disclaim property or any interest therein is barred, if before
9 the expiration of the period of time in which he is permitted to
disclaim:

11 a. The property or interest is seized under judicial process
issued against him; or

13 b. He accepts or exercises control as beneficial owner over
all or any part of the property or interest; or

15 c. He voluntarily transfers or encumbers or contracts to
transfer or encumber all or any part of the property or interest;
17 or

d. He disclaims or attempts to disclaim all or any part of the
19 property or interest in fraud of his creditors as set forth in the
["Uniform Fraudulent Conveyance Law" (R.S. 25:2-7 et seq.)]
21 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or

e. He executes a written waiver of his right to disclaim.
23 (cf: N.J.S. 38:9-9)

3. Section 9 of P.L. 1979, c. 492 (C. 46:2E-9) is amended to
25 read as follows:

9. The right of a person to disclaim property or any interest
27 therein is barred if the property or interest is seized under
judicial process issued against the person before the expiration
29 of the period in which he is permitted to disclaim; or if before
the expiration of the period in which he is permitted to disclaim,
31 the person (1) accepts or exercises control as beneficial owner
over all or any part of such property or interest; or (2)
33 voluntarily transfers or encumbers or contracts to transfer or
encumber all or any part of such property or interest; or (3)
35 disclaims or attempts to disclaim all or any part of such
property or interest in fraud of his creditors as set forth in the
37 [Uniform Fraudulent Conveyance Law (R.S. 25:2-7 et seq.)]
"Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or (4)
39 executes a written waiver of the right to disclaim.

(cf: P.L. 1979, c. 492, s. 9)

1 4. This act shall take effect January 1 next following
enactment.

3

5 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES

CHAPTER 2

7 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

Schedule of Allocations of Source Material

9

11	Source Sections		Revised Sections
	R.S. 25:2-7		25:2-21
13	R.S. 25:2-8		25:2-23
	R.S. 25:2-9		25:2-24
15	R.S. 25:2-10		25:2-27
	R.S. 25:2-11		25:2-25
17	R.S. 25:2-12		25:2-25
	R.S. 25:2-13		{ 25:2-25
19			{ 25:2-26
	R.S. 25:2-14		Not enacted
21	R.S. 25:2-15	As am. L. 1953, c. 25, s. 1	{ 25:2-29
			{ 25:2-30
23	R.S. 25:2-16	As am. L. 1953, c. 25, s. 2	25:2-29
	R.S. 25:2-17		25:2-32
25	R.S. 25:2-18		Not enacted
	R.S. 20:2-19		Not enacted
27			

29 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES

CHAPTER 2

31 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

Treatment of Source Material

33	Revised Section	Source	Treatment of Source
35	25:2-20	New	{ Derived from section 12 of UFTA (1984)
37	25:2-21	R.S. 25:2-7	{ Revised section derived from source, and section 1 of UFTA (1984)
39			

1	Revised Section	Source	Treatment of Source
3	25:2-22	New	{ Derived from section 1 of UFTA (1984) and 11 U.S.C. § 101
5	25:2-23	R.S. 25:2-8	{ Revised section derived from source and section 2 of UFTA (1984) and 11 U.S.C. § 101
7			
9	25:2-24	R.S. 25:2-9	{ Revised section derived from source and section 3 of UFTA (1984)
11	25:2-25	R.S. 25:2-11	{ Revised section derived from sources and section 4 of UFTA (1984)
13		R.S. 25:2-12	
		R.S. 25:2-13	
15	25:2-26	R.S. 25:2-13	{ Revised section derived from source and section 4 of UFTA (1984)
17			
	25:2-27	R.S. 25:2-10	{ Revised section derived from source and section 5 of UFTA (1984) and 11 U.S.C. § 547
19			
21	25:2-28	New	{ Derived from section 6 of UFTA (1984) and 11 U.S.C. § 548
23			
	25:2-29	R.S. 25:2-15	{ Revised section derived from sources and section 7 of UFTA (1984)
25		R.S. 25:2-16	
27	25:2-30	R.S. 25:2-15	{ Revised section derived from source and section 8 of UFTA (1984)
29			
	25:2-31	New	{ Derived from section 9 of UFTA (1984)
31			
	25:2-32	R.S. 25:2-17	{ Revised section derived from source and section 10 of UFTA (1984)
33			
35	25:2-33	New	{ Derived from section 11 of UFTA (184)
37	25:2-34	New	Laws repealed

1

CIVIL JUSTICE
Property and Estates

3

The "Uniform Fraudulent Transfer Act."

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1265

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 1988

This bill, as amended, was favorably reported from the Assembly Financial Institutions Committee.

Under the bill, a transfer made or obligation incurred with actual intent to hinder, delay, or defraud creditors is fraudulent. Also under the following conditions, a transfer made or obligation incurred without adequate consideration is constructively fraudulent, i.e., without regard to the actual intent of the parties: 1) the debtor was left by the transfer or obligation with unreasonably small assets for a transaction or the business in which he was engaged, 2) the debtor intended to incur, or believed that he would incur, more debts than he would be able to pay, or 3) the debtor was insolvent at the time or as a result of the transfer or obligation.

A transfer or obligation that is constructively fraudulent because insolvency concurs with or follows failure to receive adequate consideration is voidable only by a creditor in existence at the time the transfer occurs or the obligation is incurred. Reasonably equivalent value is required in order to constitute adequate consideration.

The bill eliminates good faith on the part of the transferee or obligee as an issue in the determination of whether adequate consideration is given by a transferee or obligee. It allows the transferee or obligee to show good faith in defense after a creditor establishes that a fraudulent transfer has been made or a fraudulent obligation has been incurred. A showing by a defendant that a reasonable equivalent has been given in good faith for a transfer or obligation is a complete defense although the debtor is shown to have intended to hinder, delay, or defraud creditors.

The bill adds a new category of fraudulent transfer, preferential treatment by an insolvent insider to a creditor who has reasonable cause to believe the debtor to be insolvent. An insider includes a relative, a director or officer of a corporate

debtor, a partner, or a person in control of a debtor. The premise of this provision is that an insolvent debtor is obliged to pay debts to creditors not related to him before paying those who are insiders.

The bill provides certain remedies for creditors, R.S. 25:2-29 subject to the limitations which provide certain defenses, liability and protection of transferees, R.S. 25:2-30.

The bill provides a statute of limitations that bars the right rather than the remedy on expiration of the statutory periods prescribed.

An amendment to the bill would repeal N.J.S. 14A:14-10, the section of the corporate law which deals with fraudulent transfers.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

[SECOND REPRINT]
ASSEMBLY, No. 1265

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman RILEY

1 AN ACT revising the law concerning fraudulent transfers of real
property and personal property, enacting Article 3 to Chapter
3 2 of Title 25 of the Revised Statutes, and amending N.J.S.
3B:9-9 and P.L. 1979, c. 492.

5
BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

1.

9 TITLE 25

CHAPTER 2

11 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

- 25:2-20. Short title.
13 25:2-21. Definitions: A to H.
25:2-22. Definitions: I to Z.
15 25:2-23. Insolvency.
25:2-24. Value.
17 25:2-25. Transfers fraudulent as to present and future
creditors.
19 25:2-26. Factors in determining fraudulent intent.
25:2-27. Transfers fraudulent as to present creditors.
21 25:2-28. When transfer is made or obligation incurred.
25:2-29. Remedies of creditors.
23 25:2-30. Defenses, liability and protection of transferee.
25:2-31. Extinguishment of cause of action.
25 25:2-32. Supplementary provisions.
25:2-33. Uniformity of application and construction.
27 25:2-34. Laws repealed.

29 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT

25:2-20. Short title.

31 This article shall be known and may be cited as the "Uniform
Fraudulent Transfer Act."

33 Source: New.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted February 8, 1988.

² Senate SLI committee amendments adopted May 9, 1988.

1 25:2-21. Definitions: A to H.

As used in this article:

3 "Affiliate" means:

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

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

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

13 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
15 indirectly owns, controls, or holds with power to vote, 20% or
more of the outstanding voting securities of the debtor, other
17 than a person who holds the securities,

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

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

23 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

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

29 "Asset" means property of a debtor, but the term does not
include:

31 a. Property to the extent it is encumbered by a valid lien;

b. Property to the extent it is generally exempt under
nonbankruptcy law; or

33 c. An interest in property held in tenancy by the entireties to
the extent it is not subject to process by a creditor holding a
35 claim against only one tenant.

37 "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,
39 secured, or unsecured.

1 "Creditor" means a person who has a claim.

"Debt" means liability on a claim.

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

Source: R.S. 25:2-7.

5 25:2-22. Definitions: I to Z.

As used in this article:

7 "Insider" includes:

a. If the debtor is an individual,

9 (1) A relative of the debtor or of a general partner of the debtor;

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

13 (3) A general partner in a partnership described in paragraph (2) of subsection a. of this definition; or

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

b. If the debtor is a corporation,

17 (1) A director of the debtor;

(2) An officer of the debtor;

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

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

21 (5) A general partner in a partnership described in paragraph (4) of subsection b. of this definition; or

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

25 c. If the debtor is a partnership,

(1) A general partner in the debtor;

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

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

31 (4) A general partner in a partnership described in paragraph (3) of subsection c. of this definition; or

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

35 d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

37 "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and
39 includes a security interest created by agreement, a judicial lien

1 obtained by legal or equitable process or proceedings, a
common-law lien, or a statutory lien.

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

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

9 "Relative" means an individual related by consanguinity
within the third degree as determined by the common law, a
11 spouse, or an individual related to a spouse within the third
degree as so determined, and includes an individual in an
13 adoptive relationship within the third degree.

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

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

Source: New.

23 25:2-23. Insolvency.

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

b. A debtor who is generally not paying his debts as they
27 become due is presumed to be insolvent.

c. A partnership is insolvent under subsection a. of this
29 section if the sum of the partnership's debts is greater than the
aggregate, at a fair valuation, of all of the partnership's assets
31 and the sum of the excess of the value of each general partner's
nonpartnership assets over the partner's nonpartnership debts.

33 d. Assets under this section do not include property that has
been transferred, concealed, or removed with intent to hinder,
35 delay, or defraud creditors or that has been transferred in a
manner making the transfer voidable under this article.

37 e. 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
39 included as an asset.

1 Source: R.S. 25:2-8.

25:2-24. Value.

3 a. Value is given for a transfer or an obligation if, in
4 exchange for the transfer or obligation, property is transferred
5 or an antecedent debt is secured or satisfied, but value does not
6 include an unperformed promise made otherwise than in the
7 ordinary course of the promisor's business to furnish support to
8 the debtor or another person.

9 b. For the purposes of subsection b. of R.S. 25:2-25 and
10 R.S. 25:2-27, a person gives a reasonably equivalent value if the
11 person acquires an interest of the debtor in an asset pursuant to
12 a regularly conducted, noncollusive foreclosure sale or execution
13 of a power of sale for the acquisition or disposition of the
14 interest of the debtor upon default under a mortgage, deed of
15 trust, or security agreement.

16 c. A transfer is made for present value if the exchange
17 between the debtor and the transferee is intended by them to be
18 contemporaneous and is in fact substantially contemporaneous.

19 Source: R.S. 25:2-9.

20 25:2-25. Transfers fraudulent as to present and future
21 creditors.

22 A transfer made or obligation incurred by a debtor is
23 fraudulent as to a creditor, whether the creditor's claim arose
24 before or after the transfer was made or the obligation was
25 incurred, if the debtor made the transfer or incurred the
26 obligation:

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

29 b. Without receiving a reasonably equivalent value in
30 exchange for the transfer or obligation, and the debtor:

31 (1) Was engaged or was about to engage in a business or a
32 transaction for which the remaining assets of the debtor were
33 unreasonably small in relation to the business or transaction; or

34 (2) Intended to incur, or believed or reasonably should have
35 believed that the debtor would incur, debts beyond the debtor's
36 ability to pay as they become due.

37 Source: R.S. 25:2-11; R.S. 25:2-12; R.S. 25:2-13.

25:2-26. Factors in determining fraudulent intent.

38 In determining actual intent under subsection a. of

1 R.S. 25:2-25 consideration may be given, among other factors,
to whether:

- 3 a. The transfer or obligation was to an insider;
b. The debtor retained possession or control of the property
5 transferred after the transfer;
c. The transfer or obligation was disclosed or concealed;
7 d. Before the transfer was made or obligation was incurred,
the debtor had been sued or threatened with suit;
9 e. The transfer was of substantially all the debtor's assets;
f. The debtor absconded;
11 g. The debtor removed or concealed assets;
h. The value of the consideration received by the debtor was
13 reasonably equivalent to the value of the asset transferred or
the amount of the obligation incurred;
15 i. The debtor was insolvent or became insolvent shortly after
the transfer was made or the obligation was incurred;
17 j. The transfer occurred shortly before or shortly after a
substantial debt was incurred; and
19 k. The debtor transferred the essential assets of the business
to a lienor who transferred the assets to an insider of the debtor.

21 Source: R.S. 25:2-13.

25:2-27. Transfers fraudulent as to present creditors.

23 a. A transfer made or obligation incurred by a debtor is
fraudulent as to a creditor whose claim arose before the
25 transfer was made or the obligation was incurred if the debtor
made the transfer or incurred the obligation without receiving a
27 reasonably equivalent value in exchange for the transfer or
obligation and the debtor was insolvent at that time or the
29 debtor became insolvent as a result of the transfer or obligation.

b. A transfer made by a debtor is fraudulent as to a creditor
31 whose claim arose before the transfer was made if the transfer
was made to an insider for an antecedent debt, the debtor was
33 insolvent at that time, and the insider had reasonable cause to
believe that the debtor was insolvent.

35 Source: R.S. 25:2-10.

25:2-28. When transfer is made or obligation incurred.

37 For the purposes of this article:

- a. A transfer is made:
39 (1) With respect to an asset that is real property other than a

1 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
3 perfected that a good-faith purchaser of the asset from the
debtor against whom applicable law permits the transfer to be
5 perfected cannot acquire an interest in the asset that is superior
to the interest of the transferee; and

7 (2) 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
9 on a simple contract cannot acquire a judicial lien otherwise
than under this article that is superior to the interest of the
11 transferee;

b. If applicable law permits the transfer to be perfected as
13 provided in subsection a. of this section and the transfer is not
so perfected before the commencement of an action for relief
15 under this article, the transfer is deemed made immediately
before the commencement of the action;

17 c. If applicable law does not permit the transfer to be
perfected as provided in subsection a. of this section, the
19 transfer is made when it becomes effective between the debtor
and the transferee;

21 d. A transfer is not made until the debtor has acquired rights
in the asset transferred;

23 e. An obligation is incurred:

(1) If oral, when it becomes effective between the parties; or

25 (2) If evidenced by a writing, when the writing executed by
the obligor is delivered to or for the benefit of the obligee.

27 Source: New.

25:2-29. Remedies of creditors.

29 a. In an action for relief against a transfer or obligation
under this article, a creditor, subject to the limitations in R.S.
31 25:2-30, may obtain:

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

(2) An attachment or other provisional remedy against the
35 asset transferred or other property of the transferee in
accordance with the procedure prescribed by Chapter 26 of Title
37 2A of the New Jersey Statutes and by Rule 4:60 et seq. of the
Rules Governing the Courts of the State of New Jersey;

39 (3) Subject to applicable principles of equity and in

1 accordance with applicable rules of civil procedure,

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

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

(c) Any other relief the circumstances may require.

7 b. 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.

9 Source: R.S. 25:2-15 amended 1953, c. 25, s. 1; R.S. 25:2-16
11 amended 1953, c. 25, s. 2.

25:2-30. Defenses, liability and protection of transferee.

13 a. A transfer or obligation is not voidable under subsection a. of R.S. 25:2-25 against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

17 b. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph (1) of subsection a. of R.S. 25:2-29, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection c. of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

21 (1) the first transferee of the asset or the person for whose benefit the transfer was made; or

25 (2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

27 c. If the judgment under subsection b. of this section is based upon the value of the asset transferred, the judgment shall 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.

29 d. Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to

31 (1) A lien on or a right to retain any interest in the asset transferred;

33 (2) Enforcement of any obligation incurred; or

35 (3) A reduction in the amount of the liability on the judgment.

37
39

1 e. A transfer is not voidable under subsection b. of
R.S. 25:2-25 or R.S. 25:2-27 if the transfer results from:

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

5 (2) Enforcement of a security interest in compliance with
Article 9 of the Uniform Commercial Code, N.J.S. 12A:9-101
7 et seq.

f. A transfer is not voidable under subsection b. of
9 R.S. 25:2-27:

(1) To the extent the insider gave new value to or for the
11 benefit of the debtor after the transfer was made unless the new
value was secured by a valid lien;

13 (2) If made in the ordinary course of business or financial
affairs of the debtor and the insider; or

15 (3) If made pursuant to a good-faith effort to rehabilitate the
debtor and the transfer secured present value given for that
17 purpose as well as an antecedent debt of the debtor.

Source: R.S. 25:2-15 amended 1953, c. 25, s. 1.

19 25:2-31. Extinguishment of cause of action.

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

23 a. Under subsection a. of R.S. 25:2-25, within four years
after the transfer was made or the obligation was incurred or, if
25 later, within one year after the transfer or obligation was or
could reasonably have been discovered by the claimant;

27 b. Under subsection b. of R.S. 25:2-25 or subsection a. of
R.S. 25:2-27, within four years after the transfer was made or
29 the obligation was incurred; or

c. Under subsection b. of R.S. 25:2-27, within one year after
31 the transfer was made or the obligation was incurred.

Source: New.

33 25:2-32. Supplementary provision.

Unless displaced by the provisions of this article, the
35 principles of law and equity, including the law merchant and the
law relating to principal and agent, estoppel, laches, fraud,
37 misrepresentation, duress, coercion, mistake, insolvency, or
other validating or invalidating cause, supplement its provisions.

39 Source: R.S. 25:2-17.

1 25:2-33. Uniformity of application and construction.

2 This article shall be applied and construed to effectuate its
3 general purpose to make uniform the law with respect to the
subject of this article among states enacting it.

5 Source: New.

25:2-34. Laws repealed.

7 The following are repealed:

R.S. 25:2-7 through R.S. 25:2-19 inclusive.

9 ¹N.J.S. 14A:14-10 ²[is] through N.J.S. 14A:14-12, inclusive,
are² repealed.¹

11 Source: New.

2. N.J.S. 3B:9-9 is amended to read as follows:

13 3B:9-9. When right to disclaim is barred. The right of a person
to disclaim property or any interest therein is barred, if before
15 the expiration of the period of time in which he is permitted to
disclaim:

17 a. The property or interest is seized under judicial process
issued against him; or

19 b. He accepts or exercises control as beneficial owner over
all or any part of the property or interest; or

21 c. He voluntarily transfers or encumbers or contracts to
transfer or encumber all or any part of the property or interest;

23 or

d. He disclaims or attempts to disclaim all or any part of the
25 property or interest in fraud of his creditors as set forth in the
["Uniform Fraudulent Conveyance Law" (R.S. 25:2-7 et seq.)]
27 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or

e. He executes a written waiver of his right to disclaim.

29 (cf: N.J.S. 38:9-9)

31 3. Section 9 of P.L. 1979, c. 492 (C. 46:2E-9) is amended to
read as follows:

33 9. The right of a person to disclaim property or any interest
therein is barred if the property or interest is seized under
judicial process issued against the person before the expiration
35 of the period in which he is permitted to disclaim; or if before
the expiration of the period in which he is permitted to disclaim,
37 the person (1) accepts or exercises control as beneficial owner
over all or any part of such property or interest; or (2)
39 voluntarily transfers or encumbers or contracts to transfer or

1 encumber all or any part of such property or interest; or (3)
 2 disclaims or attempts to disclaim all or any part of such
 3 property or interest in fraud of his creditors as set forth in the
 4 [Uniform Fraudulent Conveyance Law (R.S. 25:2-7 et seq.)]
 5 "Uniform Fraudulent Transfer Act" (R.S. 25:2-20 et seq.); or (4)
 6 executes a written waiver of the right to disclaim.

7 (cf: P.L. 1979, c. 492, s. 9)

8 4. This act shall take effect January 1 next following
 9 enactment.

11 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES
 12 CHAPTER 2
 13 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT
 14 Schedule of Allocations of Source Material

15

17 Source Sections		18 Revised Sections
19 R.S. 25:2-7		25:2-21
20 R.S. 25:2-8		25:2-23
21 R.S. 25:2-9		25:2-24
22 R.S. 25:2-10		25:2-27
23 R.S. 25:2-11		25:2-25
24 R.S. 25:2-12		25:2-25
25 R.S. 25:2-13		25:2-25
26 R.S. 25:2-14		25:2-26
27 R.S. 25:2-15	As am. L. 1953, c. 25, s. 1	Not enacted
		25:2-29
		25:2-30
29 R.S. 25:2-16	As am. L. 1953, c. 25, s. 2	25:2-29
30 R.S. 25:2-17		25:2-32
31 R.S. 25:2-18		Not enacted
32 R.S. 20:2-19		Not enacted

33

35 TITLE 25. FRAUDS AND FRAUDULENT CONVEYANCES
 36 CHAPTER 2
 37 ARTICLE 3. UNIFORM FRAUDULENT TRANSFER ACT
 Treatment of Source Material

	Revised Section	Source	Treatment of Source
1			
3	25:2-20	New	Derived from section 12 of UFTA (1984)
5	25:2-21	R.S. 25:2-7	Revised section derived from source, and section 1 of UFTA (1984)
7			
9	Revised Section	Source	Treatment of Source
	25:2-22	New	Derived from section 1 of UFTA (1984) and 11 U.S.C. § 101
11			
13	25:2-23	R.S. 25:2-8	Revised section derived from source and section 2 of UFTA (1984) and 11 U.S.C. § 101
15			
	25:2-24	R.S. 25:2-9	Revised section derived from source and section 3 of UFTA (1984)
17			
19	25:2-25	R.S. 25:2-11	Revised section derived from sources and section 4 of UFTA (1984)
		R.S. 25:2-12	
21		R.S. 25:2-13	Revised section derived from source and section 4 of UFTA (1984)
	25:2-26	R.S. 25:2-13	
23			
25	25:2-27	R.S. 25:2-10	Revised section derived from source and section 5 of UFTA (1984) and 11 U.S.C. § 547
27			
	25:2-28	New	Derived from section 6 of UFTA (1984) and 11 U.S.C. § 548
29			
31	25:2-29	R.S. 25:2-15	Revised section derived from sources and section 7 of UFTA (1984)
		R.S. 25:2-16	
33			
	25:2-30	R.S. 25:2-15	Revised section derived from source and section 8 of UFTA (1984)
35			
37	25:2-31	New	Derived from section 9 of UFTA (1984)
39	25:2-32	R.S. 25:2-17	Revised section derived from source and section 10 of

1			UFTA (1984)
	25:2-33	New	Derived from section 11 of
3			UFTA (184)
	25:2-34	New	Laws repealed

5

7

CIVIL JUSTICE
Property and Estates

9

The "Uniform Fraudulent Transfer Act."