

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 92

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM VOIDABLE TRANSACTIONS ACT; AMENDING SECTION 55-910,
2 IDAHO CODE, TO REVISE TERMINOLOGY AND DEFINITIONS; AMENDING SECTION
3 55-911, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 55-913,
4 IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE THAT A CREDITOR MAKING
5 A CLAIM HAS THE BURDEN OF PROOF AND TO MAKE A TECHNICAL CORRECTION;
6 AMENDING SECTION 55-914, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PRO-
7 VIDE THAT A CREDITOR MAKING A CLAIM HAS THE BURDEN OF PROOF; AMENDING
8 SECTION 55-915, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION
9 55-916, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE A REFERENCE AND TO
10 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 55-917, IDAHO CODE, TO
11 REVISE TERMINOLOGY, TO REVISE PROVISIONS RELATING TO A CREDITOR RECOV-
12 ERING JUDGMENT FOR A TRANSFER THAT IS AVOIDABLE, TO REVISE A PROVISION
13 RELATING TO WHEN A TRANSFER IS NOT VOIDABLE AND TO PROVIDE RULES FOR
14 DETERMINING BURDEN OF PROOF; AMENDING SECTION 55-918, IDAHO CODE, TO
15 REMOVE REFERENCE TO FRAUD AND TO REVISE TERMINOLOGY; AMENDING CHAPTER
16 9, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-919, IDAHO
17 CODE, TO PROVIDE RULES FOR DETERMINING A DEBTOR'S LOCATION AND TO PRO-
18 VIDE FOR WHICH LAWS GOVERN A CLAIM; AMENDING SECTION 55-919, IDAHO CODE,
19 TO REDESIGNATE THE SECTION; AMENDING SECTION 55-920, IDAHO CODE, TO
20 REDESIGNATE THE SECTION; AND AMENDING SECTION 55-921, IDAHO CODE, TO
21 REDESIGNATE THE SECTION AND TO REVISE TERMINOLOGY.
22

23 Be It Enacted by the Legislature of the State of Idaho:

24 SECTION 1. That Section 55-910, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 55-910. UNIFORM ~~FRAUDULENT TRANSFER~~ VOIDABLE TRANSACTIONS ACT -- DEF-
27 INITIONS. As used in this act:

28 (1) "Affiliate" means:

29 (a) A person ~~who~~ that directly or indirectly owns, controls, or holds
30 with power to vote, twenty percent (20%) or more of the outstanding vot-
31 ing securities of the debtor, other than a person ~~who~~ that holds the se-
32 curities:

33 1. as a fiduciary or agent without sole discretionary power to
34 vote the securities; or

35 2. solely to secure a debt, if the person has not in fact exercised
36 the power to vote;

37 (b) A corporation twenty percent (20%) or more of whose outstanding
38 voting securities are directly or indirectly owned, controlled, or held
39 with power to vote, by the debtor or a person ~~who~~ that directly or indi-
40 rectly owns, controls, or holds with power to vote, twenty percent (20%)
41 or more of the outstanding voting securities of the debtor, other than a
42 person ~~who~~ that holds the securities:

- 1 1. as a fiduciary or agent without sole discretionary power to
2 vote the securities; or
3 2. solely to secure a debt, if the person has not in fact exercised
4 the power to vote;
- 5 (c) A person whose business is operated by the debtor under a lease or
6 other agreement, or a person substantially all of whose assets are con-
7 trolled by the debtor; or
8 (d) A person ~~who~~ that operates the debtor's business under a lease or
9 other agreement or controls substantially all of the debtor's assets.
- 10 (2) "Asset" means property of a debtor, but the term does not include:
11 (a) Property to the extent it is encumbered by a valid lien;
12 (b) Property to the extent it is generally exempt under nonbankruptcy
13 law.
14 (3) "Claim" means a right to payment, whether or not the right is re-
15 duced to judgment, liquidated, unliquidated, fixed, contingent, matured,
16 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
17 (4) "Creditor" means a person ~~who~~ that has a claim.
18 (5) "Debt" means liability on a claim.
19 (6) "Debtor" means a person ~~who~~ that is liable on a claim.
20 (7) "Electronic" means relating to technology having electrical, digi-
21 tal, magnetic, wireless, optical, electromagnetic or similar capabili-
22 ties.
- 23 (8) "Insider" includes:
24 (a) If the debtor is an individual:
25 1. a relative of the debtor or of a general partner of the debtor;
26 2. a partnership in which the debtor is a general partner;
27 3. a general partner in a partnership described in subsection
28 (7) (a)2. of this section; or
29 4. a corporation of which the debtor is a director, officer, or
30 person in control;
31 (b) If the debtor is a corporation:
32 1. a director of the debtor;
33 2. an officer of the debtor;
34 3. a person in control of the debtor;
35 4. a partnership in which the debtor is a general partner;
36 5. a general partner in a partnership described in subsection
37 (7) (b)4. of this section; or
38 6. a relative of a general partner, director, officer, or person
39 in control of the debtor;
40 (c) If the debtor is a partnership:
41 1. a general partner in the debtor;
42 2. a relative of a general partner in, or a general partner of, or a
43 person in control of the debtor;
44 3. another partnership in which the debtor is a general partner;
45 4. a general partner in a partnership described in subsection
46 (7) (c)3. of this section; or
47 5. a person in control of the debtor;
48 (d) An affiliate, or an insider of an affiliate as if the affiliate were
49 the debtor; and
50 (e) A managing agent of the debtor.

1 (89) "Lien" means a charge against or an interest in property to secure
2 payment of a debt or performance of an obligation, and includes a security
3 interest created by agreement, a judicial lien obtained by legal or equi-
4 table process or proceedings, a common-law lien, or a statutory lien.

5 (10) "Organization" means a person other than an individual.

6 (911) "Person" means an individual, ~~partnership, estate, business or~~
7 ~~nonprofit entity, public corporation, association, organization, govern-~~
8 ~~ment or governmental subdivision, or agency, business trust, estate, trust~~
9 ~~or instrumentality, or any other legal or commercial entity.~~

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

11 (13) "Record" means information that is inscribed on a tangible medium
12 or that is stored in an electronic or other medium and is retrievable in per-
13 ceivable form.

14 (114) "Relative" means an individual related by consanguinity within
15 the third degree as determined by the common law, a spouse, or an individual
16 related to a spouse within the third degree as so determined, and includes an
17 individual in an adoptive relationship within the third degree.

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

20 (a) To execute or adopt a tangible symbol; or

21 (b) To attach to or logically associate with the record an electronic
22 symbol, sound or process.

23 (126) "Transfer" means every mode, direct or indirect, absolute or con-
24 ditional, voluntary or involuntary, of disposing of or parting with an asset
25 or an interest in an asset, and includes payment of money, release, lease,
26 license and creation of a lien or other encumbrance.

27 (137) "Valid lien" means a lien that is effective against the holder of
28 a judicial lien subsequently obtained by legal or equitable process or pro-
29 ceedings.

30 SECTION 2. That Section 55-911, Idaho Code, be, and the same is hereby
31 amended to read as follows:

32 55-911. INSOLVENCY DEFINED. (1) A debtor is insolvent if, at a fair
33 valuation, the sum of the debtor's debts is greater than all the sum of the
34 debtor's assets, at a fair valuation.

35 (2) A debtor ~~who~~ that is generally not paying ~~his or her~~ the debtor's
36 debts as they become due other than as a result of a bona fide dispute is pre-
37 sumed to be insolvent. The presumption imposes on the party against which
38 the presumption is directed the burden of proving that the nonexistence of
39 insolvency is more probable than its existence.

40 (3) ~~A partnership is insolvent under subsection (1) of this section if~~
41 ~~the sum of the partnership's debts is greater than the aggregate of all of~~
42 ~~the partnership's assets, at a fair valuation, and the sum of the excess of~~
43 ~~the value of each general partner's nonpartnership assets over the partner's~~
44 ~~nonpartnership debts.~~

45 (4) Assets under this section do not include property that has been
46 transferred, concealed, or removed with intent to hinder, delay, or defraud
47 creditors or that has been transferred in a manner making the transfer void-
48 able under this act.

1 (54) Debts under this section do not include an obligation to the extent
2 it is secured by a valid lien on property of the debtor not included as an as-
3 set.

4 SECTION 3. That Section 55-913, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 55-913. ~~TRANSFERS FRAUDULENT OR OBLIGATION VOIDABLE AS TO PRESENT AND~~
7 ~~OR FUTURE CREDITORS.~~ (1) A transfer made or obligation incurred by a debtor
8 is ~~fraudulent~~ voidable as to a creditor, whether the creditor's claim arose
9 before or after the transfer was made or the obligation was incurred, if the
10 debtor made the transfer or incurred the obligation:

11 (a) With actual intent to hinder, delay, or defraud any creditor of the
12 debtor; or

13 (b) Without receiving a reasonably equivalent value in exchange for the
14 transfer or obligation, and the debtor:

15 1. was engaged or was about to engage in a business or a transac-
16 tion for which the remaining assets of the debtor were unreason-
17 ably small in relation to the business or transaction; or

18 2. intended to incur, or believed or reasonably should have be-
19 lieved that ~~he or she~~ the debtor would incur, debts beyond ~~his or~~
20 ~~her~~ the debtor's ability to pay as they became due.

21 (2) In determining actual intent under subsection (1) (a) of this sec-
22 tion, consideration may be given, among other factors, as to whether:

23 (a) The transfer or obligation was to an insider;

24 (b) The debtor retained possession or control of the property trans-
25 ferred after the transfer;

26 (c) The transfer or obligation was disclosed or concealed;

27 (d) Before the transfer was made or obligation was incurred, the debtor
28 had been sued or threatened with suit;

29 (e) The transfer was of substantially all the debtor's assets;

30 (f) The debtor ~~absconded~~ absconded;

31 (g) The debtor removed or concealed assets;

32 (h) The value of the consideration received by the debtor was reason-
33 ably equivalent to the value of the asset transferred or the amount of
34 the obligation incurred;

35 (i) The debtor was insolvent or became insolvent shortly after the
36 transfer was made or the obligation was incurred;

37 (j) The transfer occurred shortly before or shortly after a substantial
38 debt was incurred; and

39 (k) The debtor transferred the essential assets of the business to a
40 lienor who transferred the assets to an insider of the debtor.

41 (3) A creditor making a claim under subsection (1) of this section has
42 the burden of proving the elements of the claim by a preponderance of the evi-
43 dence.

44 SECTION 4. That Section 55-914, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 55-914. ~~TRANSFERS FRAUDULENT OR OBLIGATION VOIDABLE AS TO PRESENT~~
47 ~~CREDITORS.~~ (1) A transfer made or obligation incurred by a debtor is

1 ~~fraudulent voidable~~ as to a creditor whose claim arose before the transfer
 2 was made or the obligation was incurred if the debtor made the transfer or
 3 incurred the obligation without receiving a reasonably equivalent value in
 4 exchange for the transfer or obligation and the debtor was insolvent at that
 5 time or the debtor became insolvent as a result of the transfer or obliga-
 6 tion.

7 (2) A transfer made by a debtor is ~~fraudulent voidable~~ as to a creditor
 8 whose claim arose before the transfer was made if the transfer was made to an
 9 insider for an antecedent debt, the debtor was insolvent at that time, and
 10 the insider had reasonable cause to believe that the debtor was insolvent.

11 (3) Subject to section 55-911(2), Idaho Code, a creditor making a claim
 12 under subsection (1) or (2) of this section has the burden of proving the ele-
 13 ments of the claim by a preponderance of the evidence.

14 SECTION 5. That Section 55-915, Idaho Code, be, and the same is hereby
 15 amended to read as follows:

16 55-915. WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED. For the pur-
 17 poses of this act:

18 (1) A transfer is made:

19 (a) With respect to an asset that is real property other than a fixture,
 20 but including the interest of a seller or purchaser under a contract for
 21 the sale of the asset, when the transfer is so far perfected that a good-
 22 faith purchaser of the asset from the debtor against ~~whom~~ which applica-
 23 ble law permits the transfer to be perfected cannot acquire an interest
 24 in the asset that is superior to the interest of the transferee; and

25 (b) With respect to an asset that is not real property or that is a fix-
 26 ture, when the transfer is so far perfected that a creditor on a simple
 27 contract cannot acquire a judicial lien otherwise than under this act
 28 that is superior to the interest of the transferee;

29 (2) If applicable law permits the transfer to be perfected as provided
 30 in subsection (1) of this section and the transfer is not so perfected be-
 31 fore the commencement of an action for relief under this act, the transfer is
 32 deemed made immediately before the commencement of the action;

33 (3) If applicable law does not permit the transfer to be perfected as
 34 provided in subsection (1) of this section, the transfer is made when it be-
 35 comes effective between the debtor and the transferee;

36 (4) A transfer is not made until the debtor has acquired rights in the
 37 asset transferred; and

38 (5) An obligation is incurred:

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

40 (b) If evidenced by a writing record, when the ~~writing executed record~~
 41 signed by the obligor is delivered to or for the benefit of the obligee.

42 SECTION 6. That Section 55-916, Idaho Code, be, and the same is hereby
 43 amended to read as follows:

44 55-916. REMEDIES OF CREDITORS. (1) In an action for relief against a
 45 transfer or obligation under this act, a creditor, subject to the limita-
 46 tions in section 55-917, Idaho Code, may obtain:

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

3 (b) An attachment or other provisional remedy against the asset trans-
4 ferred or other property of the transferee ~~in accordance with the proce-~~
5 ~~dure prescribed in chapter 5, title 8, Idaho Code if available under ap-~~
6 licable law; and

7 (c) Subject to applicable principles of equity and in accordance with
8 applicable rules of civil procedure~~;~~:

9 1. an injunction against further disposition by the debtor or a
10 transferee, or both, of the asset transferred or of other prop-
11 erty;

12 2. appointment of a receiver to take charge of the asset trans-
13 ferred or of other property of the transferee; or

14 3. any other relief the circumstances may require.

15 (2) If a creditor has obtained a judgment on a claim against the debtor,
16 the creditor, if the court so orders, may levy execution on the asset trans-
17 ferred or its proceeds.

18 SECTION 7. That Section 55-917, Idaho Code, be, and the same is hereby
19 amended to read as follows:

20 55-917. DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREE OR
21 OBLIGEE. (1) A transfer or obligation is not voidable under section
22 55-913(1) (a), Idaho Code, against a person ~~who~~ that took in good faith and
23 for a reasonably equivalent value given the debtor or against any subsequent
24 transferee or obligee.

25 (2) To the extent a transfer is avoidable in an action by a creditor un-
26 der section 55-916(1) (a), Idaho Code, the following rules apply:

27 (a) Except as otherwise provided in this section, ~~to the extent a trans-~~
28 ~~fer is voidable in an action by a creditor under section 55-916(1) (a),~~
29 ~~Idaho Code,~~ the creditor may recover judgment for the value of the asset
30 transferred, as adjusted under subsection (3) of this section, or the
31 amount necessary to satisfy the creditor's claim, whichever is less.
32 The judgment may be entered against:

33 (a) The first transferee of the asset or the person for whose ben-
34 efit the transfer was made; or

35 (b) ~~Any subsequent~~ An immediate or mediate transferee of the
36 first transferee other than:

37 1. ~~A~~ A good-faith transferee ~~or obligee who~~ that took for
38 value; or

39 2. ~~from any subsequent~~ An immediate or mediate good-faith
40 transferee or obligee of a person described in subparagraph
41 (ii)1. of this paragraph.

42 (b) Recovery pursuant to section 55-916(1) (a) or (2), Idaho Code, of
43 or from the asset transferred or its proceeds, by levy or otherwise, is
44 available only against a person described in paragraph (a) (i) or (ii) of
45 this subsection.

46 (3) If the judgment under subsection (2) of this section is based upon
47 the value of the asset transferred, the judgment must be for an amount equal
48 to the value of the asset at the time of the transfer, subject to adjustment
49 as the equities may require.

1 (4) Notwithstanding voidability of a transfer or an obligation under
2 this act, a good-faith transferee or obligee is entitled, to the extent of
3 the value given the debtor for the transfer or obligation, to:

- 4 (a) A lien on or a right to retain any interest in the asset transferred;
5 (b) Enforcement of any obligation incurred; or
6 (c) A reduction in the amount of the liability on the judgment.

7 (5) A transfer is not voidable under sections 55-913(1) (b) or 55-914,
8 Idaho Code, if the transfer results from:

- 9 (a) Termination of a lease upon default by the debtor when the termina-
10 tion is pursuant to the lease and applicable law; or
11 (b) Enforcement of a security interest in compliance with chapter 9,
12 title 28, Idaho Code, other than acceptance of collateral in full or
13 partial satisfaction of the obligation it secures.

14 (6) A transfer is not voidable under section 55-914(2), Idaho Code:

- 15 (a) To the extent the insider gave new value to or for the benefit of the
16 debtor after the transfer was made unless, except to the extent the new
17 value was secured by a valid lien;
18 (b) If made in the ordinary course of business or financial affairs of
19 the debtor and the insider; or
20 (c) If made pursuant to a good-faith effort to rehabilitate the debtor
21 and the transfer secured present value given for that purpose as well as
22 an antecedent debt of the debtor.

23 (7) The following rules determine the burden of proving matters re-
24 ferred to in this section:

- 25 (a) A party that seeks to invoke subsection (1), (4), (5) or (6) of this
26 section has the burden of proving the applicability of that subsection;
27 (b) Except as otherwise provided in paragraphs (c) and (d) of this sub-
28 section, the creditor has the burden of proving each applicable element
29 of subsection (2) or (3) of this section;
30 (c) The transferee has the burden of proving the applicability to the
31 transferee of subsection (2) (a) (ii) 1. or 2. of this section; and
32 (d) A party that seeks adjustment under subsection (3) of this section
33 has the burden of proving the adjustment.

34 (8) Proof of matters referred to in this section is sufficient if estab-
35 lished by a preponderance of the evidence.

36 SECTION 8. That Section 55-918, Idaho Code, be, and the same is hereby
37 amended to read as follows:

38 55-918. EXTINGUISHMENT OF A CAUSE OF ACTION. A cause of action with re-
39 spect to a ~~fraudulent~~ transfer or obligation under this act is extinguished
40 unless action is brought:

41 (1) Under section 55-913(1) (a), Idaho Code, within not later than four
42 (4) years after the transfer was made or the obligation was incurred or, if
43 later, within not later than one (1) year after the transfer or obligation
44 was or could reasonably have been discovered by the claimant;

45 (2) Under section 55-913(1) (b) or 55-914(1), Idaho Code, within not
46 later than four (4) years after the transfer was made or the obligation was
47 incurred; or

48 (3) Under section 55-914(2), Idaho Code, within not later than one (1)
49 year after the transfer was made or the obligation was incurred.

1 SECTION 9. That Chapter 9, Title 55, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 55-919, Idaho Code, and to read as follows:

4 55-919. GOVERNING LAW. (1) In this section, the following rules shall
5 determine a debtor's location:

6 (a) A debtor who is an individual is located at the individual's princi-
7 pal residence;

8 (b) A debtor that is an organization and has only one (1) place of busi-
9 ness is located at its place of business; and

10 (c) A debtor that is an organization and has more than one (1) place of
11 business is located at its chief executive office.

12 (2) A claim in the nature of a claim under this act is governed by the lo-
13 cal law of the jurisdiction in which the debtor is located when the transfer
14 is made or the obligation is incurred.

15 SECTION 10. That Section 55-919, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 55-91920. APPLICATION OF GENERAL LAW. Unless displaced by the provi-
18 sions of this act, the principles of law and equity, including the law mer-
19 chant and the law relating to principal and agent, estoppel, laches, fraud,
20 misrepresentation, duress, coercion, mistake, insolvency, or other vali-
21 dating or invalidating cause, supplement its provisions.

22 SECTION 11. That Section 55-920, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 55-9201. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This act shall
25 be applied and construed to effectuate its general purpose to make uniform
26 the law with respect to the subject of this act among states enacting it.

27 SECTION 12. That Section 55-921, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 55-9212. SHORT TITLE. This act, that was formerly cited as the "Uni-
30 form Fraudulent Transfer Act" may be cited as the "Uniform ~~Fraudulent Trans-~~
31 ~~fer~~ Voidable Transactions Act."