

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 92, As Amended, As Amended in the Senate

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 A
5 CLAIM HAS THE BURDEN OF PROOF AND TO MAKE A TECHNICAL CORRECTION; AMEND-
6 ING SECTION 55-914, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE
7 THAT A CREDITOR MAKING A CLAIM HAS THE BURDEN OF PROOF; AMENDING SECTION
8 55-915, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 55-916,
9 IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE A REFERENCE AND TO MAKE A
10 TECHNICAL CORRECTION; AMENDING SECTION 55-917, IDAHO CODE, TO REVISE
11 TERMINOLOGY, TO REVISE PROVISIONS RELATING TO A CREDITOR RECOVERING
12 JUDGMENT FOR A TRANSFER THAT IS AVOIDABLE, TO REVISE A PROVISION RE-
13 LATING TO WHEN A TRANSFER IS NOT VOIDABLE, TO PROVIDE APPLICATION TO
14 A TRANSFER OF A CHARITABLE CONTRIBUTION TO A QUALIFIED RELIGIOUS OR
15 CHARITABLE ENTITY OR ORGANIZATION AND TO PROVIDE RULES FOR DETERMINING
16 BURDEN OF PROOF; AMENDING SECTION 55-918, IDAHO CODE, TO REMOVE REFER-
17 ENCE TO FRAUD AND TO REVISE TERMINOLOGY; AMENDING CHAPTER 9, TITLE 55,
18 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-919, IDAHO CODE, TO PRO-
19 VIDE RULES FOR DETERMINING A DEBTOR'S LOCATION AND TO PROVIDE FOR WHICH
20 LAWS GOVERN A CLAIM; AMENDING SECTION 55-919, IDAHO CODE, TO REDESIG-
21 NATE THE SECTION; AMENDING SECTION 55-920, IDAHO CODE, TO REDESIGNATE
22 THE SECTION; AND AMENDING SECTION 55-921, IDAHO CODE, TO REDESIGNATE
23 THE SECTION AND TO REVISE TERMINOLOGY.
24

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

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

28 55-910. UNIFORM ~~FRAUDULENT TRANSFER~~ VOIDABLE TRANSACTIONS ACT -- DEF-
29 INITIONS. As used in this act:

30 (1) "Affiliate" means:

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

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

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

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

1 or more of the outstanding voting securities of the debtor, other than a
 2 person ~~who~~ that holds the securities:

- 3 1. as a fiduciary or agent without sole discretionary power to
 4 vote the securities; or
- 5 2. solely to secure a debt, if the person has not in fact exercised
 6 the power to vote;

7 (c) A person whose business is operated by the debtor under a lease or
 8 other agreement, or a person substantially all of whose assets are con-
 9 trolled by the debtor; or

10 (d) A person ~~who~~ that operates the debtor's business under a lease or
 11 other agreement or controls substantially all of the debtor's assets.

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

13 (a) Property to the extent it is encumbered by a valid lien;

14 (b) Property to the extent it is generally exempt under nonbankruptcy
 15 law.

16 (3) "Claim" means a right to payment, whether or not the right is re-
 17 duced to judgment, liquidated, unliquidated, fixed, contingent, matured,
 18 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

19 (4) "Creditor" means a person ~~who~~ that has a claim.

20 (5) "Debt" means liability on a claim.

21 (6) "Debtor" means a person ~~who~~ that is liable on a claim.

22 (7) "Electronic" means relating to technology having electrical, digi-
 23 tal, magnetic, wireless, optical, electromagnetic or similar capabili-
 24 ties.

25 (8) "Insider" includes:

26 (a) If the debtor is an individual:

- 27 1. a relative of the debtor or of a general partner of the debtor;
- 28 2. a partnership in which the debtor is a general partner;
- 29 3. a general partner in a partnership described in subsection
 30 (7) (a)2. of this section; or
- 31 4. a corporation of which the debtor is a director, officer, or
 32 person in control;

33 (b) If the debtor is a corporation:

- 34 1. a director of the debtor;
- 35 2. an officer of the debtor;
- 36 3. a person in control of the debtor;
- 37 4. a partnership in which the debtor is a general partner;
- 38 5. a general partner in a partnership described in subsection
 39 (7) (b)4. of this section; or
- 40 6. a relative of a general partner, director, officer, or person
 41 in control of the debtor;

42 (c) If the debtor is a partnership:

- 43 1. a general partner in the debtor;
- 44 2. a relative of a general partner in, or a general partner of, or a
 45 person in control of the debtor;
- 46 3. another partnership in which the debtor is a general partner;
- 47 4. a general partner in a partnership described in subsection
 48 (7) (c)3. of this section; or
- 49 5. a person in control of the debtor;

1 (d) An affiliate, or an insider of an affiliate as if the affiliate were
2 the debtor; and

3 (e) A managing agent of the debtor.

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

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

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

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

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

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

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

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

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

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

30 ~~(137) "Valid lien" means a lien that is effective against the holder of~~
31 ~~a judicial lien subsequently obtained by legal or equitable process or pro-~~
32 ~~ceedings.~~

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

35 55-911. INSOLVENCY DEFINED. (1) A debtor is insolvent if, at a fair
36 valuation, the sum of the debtor's debts is greater than all the sum of the
37 debtor's assets, at a fair valuation.

38 (2) A debtor ~~who~~ that is generally not paying ~~his or her~~ the debtor's
39 debts as they become due other than as a result of a bona fide dispute is pre-
40 sumed to be insolvent. The presumption imposes on the transferee or debtor
41 the burden of proving that it is probable that the debtor was solvent at the
42 time of the transfer.

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

48 ~~(4) Assets under this section do not include property that has been~~
49 ~~transferred, concealed, or removed with intent to hinder, delay, or defraud~~

1 creditors or that has been transferred in a manner making the transfer void-
2 able under this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (g) The debtor removed or concealed assets;

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

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

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

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

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

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

1 55-914. ~~TRANSFERS FRAUDULENT OR OBLIGATION VOIDABLE AS TO PRESENT~~
 2 CREDITORS. (1) A transfer made or obligation incurred by a debtor is
 3 ~~fraudulent voidable~~ as to a creditor whose claim arose before the transfer
 4 was made or the obligation was incurred if the debtor made the transfer or
 5 incurred the obligation without receiving a reasonably equivalent value in
 6 exchange for the transfer or obligation and the debtor was insolvent at that
 7 time or the debtor became insolvent as a result of the transfer or obliga-
 8 tion.

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

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

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

18 55-915. WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED. For the pur-
 19 poses of this act:

20 (1) A transfer is made:

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

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

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

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

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

40 (5) An obligation is incurred:

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

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

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

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

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

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

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

12 1. an injunction against further disposition by the debtor or a
 13 transferee, or both, of the asset transferred or of other prop-
 14 erty;

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

17 3. any other relief the circumstances may require.

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

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

23 55-917. DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREE OR
 24 OBLIGEE. (1) A transfer or obligation is not voidable under section
 25 55-913(1) (a), Idaho Code, against a person ~~who~~ that took in good faith and
 26 for a reasonably equivalent value given the debtor or against any subsequent
 27 transferee or obligee.

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

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

36 ~~(a)~~ (i) The first transferee of the asset or the person for whose ben-
 37 efit the transfer was made; or

38 ~~(b)~~ (ii) Any subsequent An immediate or mediate transferee of the
 39 first transferee other than:

40 1. A good-faith transferee or obligee who that took for
 41 value; or

42 2. from any subsequent An immediate or mediate good-faith
 43 transferee or obligee of a person described in subparagraph
 44 (ii)1. of this paragraph.

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

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

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

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

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

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

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

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

27 (7) A transfer of a charitable contribution to a qualified religious or
 28 charitable entity or organization shall not be considered to be a transfer
 29 covered by this act for the amount of the contribution that does not exceed
 30 fifteen percent (15%) of the gross annual income of the debtor for the year in
 31 which the transfer is made, and the transfer is consistent with the practices
 32 of the debtor in making charitable contributions.

33 (8) The following rules determine the burden of proving matters re-
 34 ferred to in this section:

- 35 (a) A party that seeks to invoke subsection (1), (4), (5) or (6) of this
 36 section has the burden of proving the applicability of that subsection;
- 37 (b) Except as otherwise provided in paragraphs (c) and (d) of this sub-
 38 section, the creditor has the burden of proving each applicable element
 39 of subsection (2) or (3) of this section;
- 40 (c) The transferee has the burden of proving the applicability to the
 41 transferee of subsection (2) (a) (ii) 1. or 2. of this section; and
- 42 (d) A party that seeks adjustment under subsection (3) of this section
 43 has the burden of proving the adjustment.

44 (9) Proof of matters referred to in this section is sufficient if estab-
 45 lished by a preponderance of the evidence.

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

1 55-918. EXTINGUISHMENT OF A CAUSE OF ACTION. A cause of action with re-
2 spect to a ~~fraudulent~~ transfer or obligation under this act is extinguished
3 unless action is brought:

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

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

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

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

16 55-919. GOVERNING LAW. (1) In this section, the following rules shall
17 determine a debtor's location:

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

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

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

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

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

29 ~~55-919~~20. APPLICATION OF GENERAL LAW. Unless displaced by the provi-
30 sions of this act, the principles of law and equity, including the law mer-
31 chant and the law relating to principal and agent, estoppel, laches, fraud,
32 misrepresentation, duress, coercion, mistake, insolvency, or other vali-
33 dating or invalidating cause, supplement its provisions.

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

36 ~~55-920~~1. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This act shall
37 be applied and construed to effectuate its general purpose to make uniform
38 the law with respect to the subject of this act among states enacting it.

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

41 ~~55-921~~2. SHORT TITLE. This act, that was formerly cited as the "Uni-
42 form Fraudulent Transfer Act" may be cited as the "Uniform Fraudulent Trans-
43 fer Voidable Transactions Act."