

Senator Lyle W. Hillyard proposes the following substitute bill:

**UNIFORM VOIDABLE TRANSACTIONS ACT**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: V. Lowry Snow

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**LONG TITLE**

**General Description:**

This bill renames, recodifies, and amends the Uniform Fraudulent Transfer Act and related provisions.

**Highlighted Provisions:**

This bill:

- ▶ changes the name of the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act;
- ▶ makes changes consistent with the 2014 version of the Uniform Fraudulent Transfer Act;
- ▶ modifies and defines terms;
- ▶ modifies provisions relating to the determination of insolvency;
- ▶ enacts provisions relating to the burden of proof;
- ▶ modifies provisions relating to the transfer and recovery of assets;
- ▶ enacts a governing law provision;
- ▶ addresses the bill's applicability to a series organization;
- ▶ enacts transitional language;
- ▶ addresses the applicability of the Relation to Electronic Signatures in Global and National Commerce Act; and



26           ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           None

31 **Utah Code Sections Affected:**

32 AMENDS:

33           **7-2-12**, as last amended by Laws of Utah 2014, Chapter 189

34           **31A-27a-507**, as enacted by Laws of Utah 2007, Chapter 309

35           **70A-2-402**, as enacted by Laws of Utah 1965, Chapter 154

36           **70A-2a-308**, as enacted by Laws of Utah 1990, Chapter 197

37           **75-2-205**, as last amended by Laws of Utah 2003, Second Special Session, Chapter 3

38           **75-7-105**, as enacted by Laws of Utah 2004, Chapter 89

39           **75-7-107**, as renumbered and amended by Laws of Utah 2004, Chapter 89

40           **75-7-301**, as repealed and reenacted by Laws of Utah 2004, Chapter 89

41           **75-7-501**, as repealed and reenacted by Laws of Utah 2004, Chapter 89

42           **75-7-505**, as enacted by Laws of Utah 2004, Chapter 89

43           **75-7-816**, as enacted by Laws of Utah 2004, Chapter 89

44           **78B-2-302**, as last amended by Laws of Utah 2016, Chapter 388

45           **78B-2-307**, as renumbered and amended by Laws of Utah 2008, Chapter 3

46 ENACTS:

47           **25-6-201**, Utah Code Annotated 1953

48           **25-6-301**, Utah Code Annotated 1953

49           **25-6-401**, Utah Code Annotated 1953

50           **25-6-402**, Utah Code Annotated 1953

51           **25-6-403**, Utah Code Annotated 1953

52           **25-6-407**, Utah Code Annotated 1953

53           **25-6-501**, Utah Code Annotated 1953

54 RENUMBERS AND AMENDS:

55           **25-6-101**, (Renumbered from 25-6-1, as enacted by Laws of Utah 1988, Chapter 59)

56           **25-6-102**, (Renumbered from 25-6-2, as last amended by Laws of Utah 1992, Chapter

- 57 168)
- 58 **25-6-103**, (Renumbered from 25-6-3, as enacted by Laws of Utah 1988, Chapter 59)
- 59 **25-6-104**, (Renumbered from 25-6-4, as enacted by Laws of Utah 1988, Chapter 59)
- 60 **25-6-202**, (Renumbered from 25-6-5, as enacted by Laws of Utah 1988, Chapter 59)
- 61 **25-6-203**, (Renumbered from 25-6-6, as last amended by Laws of Utah 1989, Chapter
- 62 61)
- 63 **25-6-302**, (Renumbered from 25-6-7, as enacted by Laws of Utah 1988, Chapter 59)
- 64 **25-6-303**, (Renumbered from 25-6-8, as enacted by Laws of Utah 1988, Chapter 59)
- 65 **25-6-304**, (Renumbered from 25-6-9, as last amended by Laws of Utah 2015, Chapter
- 66 459)
- 67 **25-6-305**, (Renumbered from 25-6-10, as enacted by Laws of Utah 1988, Chapter 59)
- 68 **25-6-404**, (Renumbered from 25-6-11, as enacted by Laws of Utah 1988, Chapter 59)
- 69 **25-6-405**, (Renumbered from 25-6-12, as enacted by Laws of Utah 1988, Chapter 59)
- 70 **25-6-406**, (Renumbered from 25-6-13, as enacted by Laws of Utah 1988, Chapter 59)
- 71 **25-6-502**, (Renumbered from 25-6-14, as repealed and reenacted by Laws of Utah
- 72 2013, Chapter 284)



74 *Be it enacted by the Legislature of the state of Utah:*

75 Section 1. Section **7-2-12** is amended to read:

76 **7-2-12. Powers of commissioner in possession -- Sale of assets -- Postpossession**  
 77 **financing -- New deposit instruments -- Executory contracts -- Transfer of property --**  
 78 **Avoidance of transfers -- Avoidable preferences -- Setoff.**

79 (1) Upon taking possession of the institution, the commissioner may do all things  
 80 necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the  
 81 affairs of the institution in a manner he determines to be in the best interests of the institution's  
 82 depositors and creditors. Any such determination by the commissioner may not be overruled  
 83 by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to law.  
 84 In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may  
 85 compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of  
 86 the property of the institution for cash or other consideration. The commissioner shall give  
 87 such notice as the court may direct to the institution of the time and place of hearing upon an

88 application to the court for approval of the sale. The commissioner shall execute and deliver to  
89 the purchaser of any property of the institution sold by him those deeds or instruments  
90 necessary to evidence the passing of title.

91 (2) With approval of the court and upon terms and with priority determined by the  
92 court, the commissioner may borrow money and issue evidence of indebtedness. To secure  
93 repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any  
94 or all of the property of the institution superior to any charge on the property for expenses of  
95 the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of  
96 facilitating liquidation, protecting or preserving the assets in the charge of the commissioner,  
97 expediting the making of distributions to depositors and other claimants, aiding in the  
98 reopening or reorganization of the institution or its merger or consolidation with another  
99 institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or  
100 other person lawfully in charge of the affairs of the institution is under any personal obligation  
101 to repay those loans. The commissioner may take any action necessary or proper to  
102 consummate the loan and to provide for its repayment and to give bond when required for the  
103 faithful performance of all undertakings in connection with it. The commissioner or special  
104 deputy shall make application to the court for approval of any loan proposed under this section.  
105 Notice of hearing upon the application shall be given as the court directs. At the hearing upon  
106 the application any stockholder or shareholder of the institution or any depositor or other  
107 creditor of the institution may appear and be heard on the application. Prior to the obtaining of  
108 a court order, the commissioner or special deputy in charge of the affairs of the institution may  
109 make application or negotiate for the loan or loans subject to the obtaining of the court order.

110 (3) With the approval of the court pursuant to a plan of reorganization or liquidation  
111 under Section 7-2-18, the commissioner may provide for depositors to receive new deposit  
112 instruments from a depository institution that purchases or receives some or all of the assets of  
113 the institution in the possession of the commissioner. All new deposit instruments issued by  
114 the acquiring depository institution may, in accordance with the terms of the plan of  
115 reorganization or liquidation, be subject to different amounts, terms, and interest rates than the  
116 original deposit instruments of the institution in the possession of the commissioner. All  
117 deposit instruments issued by the acquiring institution shall be considered new deposit  
118 obligations of the acquiring institution. The original deposit instruments issued by the

119 institution in the possession of the commissioner are not liabilities of the acquiring institution,  
120 unless assumed by the acquiring institution. Unpaid claims of depositors against the institution  
121 in the possession of the commissioner continue, and may be provided for in the plan of  
122 reorganization or liquidation.

123 (4) The commissioner, after taking possession of any institution or other person subject  
124 to the jurisdiction of the department, may terminate any executory contract, including standby  
125 letters of credit, unexpired leases and unexpired employment contracts, to which the institution  
126 or other person is a party. If the termination of an executory contract or unexpired lease  
127 constitutes a breach of the contract or lease, the date of the breach is the date on which the  
128 commissioner took possession of the institution. Claims for damages for breach of an  
129 executory contract shall be filed within 30 days of receipt of notice of the termination, and if  
130 allowed, shall be paid in the same manner as all other allowable claims of the same priority out  
131 of the assets of the institution available to pay claims.

132 (5) With approval of the court and upon a showing by the commissioner that it is in the  
133 best interests of the depositors and creditors, the commissioner may transfer property on  
134 account of an indebtedness incurred by the institution prior to the date of the taking.

135 (6) (a) The commissioner may avoid any transfer of any interest of the institution in  
136 property or any obligation incurred by the institution that is void or voidable by a creditor under  
137 Title 25, Chapter 6, Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act.

138 (b) The commissioner may avoid any transfer of any interest in real property of the  
139 institution that is void as against or voidable by a subsequent purchaser in good faith and for a  
140 valuable consideration of the same real property or any portion thereof who has duly recorded  
141 his conveyance at the time possession of the institution is taken, whether or not such a  
142 purchaser exists.

143 (c) The commissioner may avoid any transfer of any interest in property of the  
144 institution or any obligation incurred by the institution that is invalid or void as against, or is  
145 voidable by a creditor that extends credit to the institution at the time possession of the  
146 institution is taken by the commissioner, and that obtains, at such time and with respect to such  
147 credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial  
148 lien on the property involved, whether or not such a creditor exists.

149 (d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any

150 transfer of any interest in property of the institution shall be unaffected by and without regard  
151 to any knowledge of the commissioner or of any creditor of the institution.

152 (e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary  
153 or involuntary, or disposing of or parting with property or with an interest in property,  
154 including retention of title as a security interest.

155 (f) The commissioner may avoid and recover any payment or other transfer of any  
156 interest in property of the institution to or for the benefit of a creditor, for or on account of an  
157 antecedent debt owed by the institution before the transfer was made if the creditor at the time  
158 of such transfer had reasonable cause to believe that the institution was insolvent, and if the  
159 payment or other transfer will allow the creditor to obtain a greater percentage of his debt than  
160 he would be entitled to under the provisions of Section 7-2-15. For the purposes of this  
161 subsection:

162 (i) antecedent debt does not include earned wages and salaries and other operating  
163 expenses incurred and paid in the normal course of business;

164 (ii) a transfer of any interest in real property is deemed to have been made or suffered  
165 when it became so far perfected that a subsequent good faith purchaser of the property from the  
166 institution for a valuable consideration could not acquire an interest superior to the transferee;  
167 and

168 (iii) a transfer of property other than real property is deemed to have been made or  
169 suffered when it became so far perfected that a creditor on a simple contract could not acquire a  
170 lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest  
171 of the transferee.

172 (g) For purposes of this section, "date of possession" means the earlier of the date the  
173 commissioner takes possession of a financial institution under Title 7, Chapter 2, Possession of  
174 Depository Institution by Commissioner, or the date when the commissioner enters an order  
175 suspending payments to depositors and other creditors under Section 7-2-19.

176 (7) (a) With or without the prior approval of the court, the commissioner or any federal  
177 deposit insurance agency appointed by him as receiver or liquidator of a depository institution  
178 closed by the commissioner under the provisions of this chapter may setoff against the deposits  
179 or other liabilities of the institution any debts or other obligations of the depositor or claimant  
180 due and owing to the institution. The amount of any setoff against the liabilities of the

181 institution shall be no greater than the amount the depositor or claimant would receive pursuant  
182 to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a  
183 depositor's or claimant's claim against the institution will or may be less than the full amount of  
184 the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or  
185 liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the  
186 court, after notice and opportunity for hearing, approves the estimate for purposes of making  
187 the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator  
188 appointed by him shall give written notice to the depositor or claimant of the amount setoff.

189 (b) The existence and amount of a debtor or creditor relationship or both, between the  
190 institution and its depositor or claimant and the right to the proceeds in a deposit account shall  
191 be determined solely by the books and records of the institution.

192 (c) Any contract purporting to affect the right of setoff shall be in writing and signed by  
193 the depositor-debtor and an authorized officer of the institution and be maintained as a part of  
194 the records of the institution.

195 (d) Any claim that a deposit account is a special account not subject to setoff because it  
196 was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction  
197 of or as security for an indebtedness to the institution or that the right to the deposit actually  
198 belongs to a third party does not affect the right to setoff of the commissioner or any receiver or  
199 liquidator appointed by him unless the special nature of the account is clearly shown in the  
200 books and records of the institution.

201 (e) In the absence of any other instrument in writing, the terms and provisions of the  
202 signature card applicable to a particular account in effect at the time the commissioner takes  
203 possession of the institution shall be determinative of the right of setoff by the commissioner or  
204 any receiver or liquidator appointed by him.

205 (f) Knowledge of the institution or of any director, officer, or employee of the  
206 institution that the nature of the account is other than as shown in the books and records of the  
207 institution does not affect the right of setoff by the commissioner or any receiver or liquidator  
208 appointed by him.

209 (g) The liability of the commissioner or any receiver or liquidator appointed by him for  
210 exercising a right of setoff other than as authorized by this section shall be only to a person  
211 who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is

212 superior to that of the person whose debt to the institution was setoff against the account. The  
213 amount of any such liability shall be no greater than the amount of the setoff and neither the  
214 commissioner or any receiver or liquidator appointed by him shall be liable for any action taken  
215 under this section unless the action taken is determined by the court to be arbitrary or  
216 capricious.

217 Section 2. Section **25-6-101**, which is renumbered from Section 25-6-1 is renumbered  
218 and amended to read:

219 **CHAPTER 6. UNIFORM VOIDABLE TRANSACTIONS ACT**

220 **Part 1. General Provisions**

221 ~~[25-6-1]~~. **25-6-101. Title.**

222 (1) This chapter is known as the "Uniform [~~Fraudulent Transfer~~] Voidable  
223 Transactions Act."

224 (2) This part is known as "General Provisions."

225 Section 3. Section **25-6-102**, which is renumbered from Section 25-6-2 is renumbered  
226 and amended to read:

227 ~~[25-6-2]~~. **25-6-102. Definitions.**

228 [~~It~~] As used in this chapter:

229 (1) "Affiliate" means:

230 (a) a person [~~who~~] that directly or indirectly owns, controls, or holds with power to  
231 vote, 20% or more of the outstanding voting securities of the debtor, other than a person [~~who~~]  
232 that holds the securities:

233 (i) as a fiduciary or agent without sole discretionary power to vote the securities; or

234 (ii) solely to secure a debt, if the person has not exercised the power to vote;

235 (b) a corporation 20% or more of whose outstanding voting securities are directly or  
236 indirectly owned, controlled, or held with power to vote, by the debtor or a person [~~who~~] that  
237 directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the  
238 outstanding voting securities of the debtor, other than a person [~~who~~] that holds the securities:

239 (i) as a fiduciary or agent without sole discretionary power to vote the securities; or

240 (ii) solely to secure a debt, if the person has not exercised the power to vote;

241 (c) a person whose business is operated by the debtor under a lease or other agreement,  
242 or a person substantially all of whose assets are controlled by the debtor; or



243 (d) a person [~~who~~] that operates the debtor's business under a lease or other agreement  
244 or controls substantially all of the debtor's assets.

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

246 (a) property to the extent it is encumbered by a valid lien;

247 (b) property to the extent it is generally exempt under nonbankruptcy law; or

248 (c) an interest in property held in tenancy by the entirety to the extent it is not subject  
249 to process by a creditor holding a claim against only one tenant.

250 (3) "Claim," except as used in "claim for relief," means a right to payment, whether or  
251 not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,  
252 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

253 (4) "Creditor" means a person [~~who~~] that has a claim.

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

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

256 (7) "Electronic" means relating to technology having electrical, digital, magnetic,  
257 wireless, optical, electromagnetic, or similar capabilities.

258 [~~(7)~~] (8) "Insider" includes:

259 (a) if the debtor is an individual:

260 (i) a relative of the debtor or of a general partner of the debtor;

261 (ii) a partnership in which the debtor is a general partner;

262 (iii) a general partner in a partnership described in Subsection [~~(7)~~] (8)(a)(ii);

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

264 (v) a limited liability company of which the debtor is a member or manager;

265 (b) if the debtor is a corporation:

266 (i) a director of the debtor;

267 (ii) an officer of the debtor;

268 (iii) a person in control of the debtor;

269 (iv) a partnership in which the debtor is a general partner;

270 (v) a general partner in a partnership described in Subsection [~~(7)~~] (8)(b)(iv);

271 (vi) a limited liability company of which the debtor is a member or manager; or

272 (vii) a relative of a general partner, director, officer, or person in control of the debtor;

273 (c) if the debtor is a partnership:

274 (i) a general partner in the debtor;  
275 (ii) a relative of a general partner in, a general partner of, or a person in control of the  
276 debtor;

277 (iii) another partnership in which the debtor is a general partner;

278 (iv) a general partner in a partnership described in Subsection ~~[(7)]~~ (8)(c)(iii);

279 (v) a limited liability company of which the debtor is a member or manager; or

280 (vi) a person in control of the debtor;

281 (d) if the debtor is a limited liability company:

282 (i) a member or manager of the debtor;

283 (ii) another limited liability company in which the debtor is a member or manager;

284 (iii) a partnership in which the debtor is a general partner;

285 (iv) a general partner in a partnership described in Subsection (7)(d)(iii);

286 (v) a person in control of the debtor; or

287 (vi) a relative of a general partner, member, manager, or person in control of the  
288 debtor;

289 (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

290 (f) a managing agent of the debtor.

291 ~~[(8)]~~ (9) "Lien" means a charge against or an interest in property to secure payment of a  
292 debt or performance of an obligation, and includes a security interest created by agreement, a  
293 judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a  
294 statutory lien.

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

296 ~~[(9)]~~ (11) "Person" means an individual, estate, partnership, limited liability company,  
297 ~~[corporation]~~, association, ~~[organization]~~, trust, business or nonprofit entity, public corporation,  
298 government or governmental subdivision ~~[or]~~, agency, ~~[business trust, estate, trust, or any]~~  
299 instrumentality, or other legal or commercial entity.

300 ~~[(10)]~~ (12) "Property" means anything that may be the subject of ownership.

301 (13) "Record" means information that is inscribed on a tangible medium or that is  
302 stored in an electronic or other medium that is retrievable in perceivable form.

303 ~~[(11)]~~ (14) "Relative" means an individual ~~[or an individual related to a spouse,]~~  
304 related by consanguinity within the third degree as determined by the common law, ~~[or]~~ a

305 spouse, or an individual related to a spouse within the third degree as so determined, and  
 306 includes an individual in an adoptive relationship within the third degree.

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

308 (a) to execute or adopt a tangible symbol; or

309 (b) to attach to or logically associate with the record an electronic symbol, sound, or  
 310 process.

311 [~~(12)~~] (16) "Transfer" means every mode, direct or indirect, absolute or conditional, or  
 312 voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and  
 313 includes payment of money, release, lease, and creation of a lien or other encumbrance.

314 [~~(13)~~] (17) "Valid lien" means a lien that is effective against the holder of a judicial  
 315 lien subsequently obtained by legal or equitable process or proceedings.

316 Section 4. Section **25-6-103**, which is renumbered from Section 25-6-3 is renumbered  
 317 and amended to read:

318 ~~[25-6-3].~~ **25-6-103. Insolvency.**

319 (1) A debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater  
 320 than all of the debtor's assets [~~at a fair valuation~~].

321 (2) (a) A debtor [~~who~~] that is generally not paying [~~his~~] the debtor's debts as they  
 322 become due other than as a result of a bona fide dispute is presumed to be insolvent.

323 (b) The presumption imposes on the party against which the presumption is directed  
 324 the burden of proving that the nonexistence of insolvency is more probable than its existence.

325 [~~(3) A partnership is insolvent under Subsection (1) if the sum of the partnership's~~  
 326 ~~debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the~~  
 327 ~~sum of the excess of the value of each general partner's nonpartnership assets over the partner's~~  
 328 ~~nonpartnership debts.]~~

329 [~~(4)~~] (3) Assets under this section do not include property that has been transferred,  
 330 concealed, or removed with intent to hinder, delay, or defraud creditors or that has been  
 331 transferred in a manner making the transfer voidable under this chapter.

332 [~~(5)~~] (4) Debts under this section do not include an obligation to the extent it is secured  
 333 by a valid lien on property of the debtor not included as an asset.

334 Section 5. Section **25-6-104**, which is renumbered from Section 25-6-4 is renumbered  
 335 and amended to read:

336 ~~[25-6-4]~~. **25-6-104. Value -- Transfer.**

337 (1) Value is given for a transfer or an obligation if, in exchange for the transfer or  
338 obligation, property is transferred or an antecedent debt is secured or satisfied. However, value  
339 does not include an unperformed promise made other than in the ordinary course of the  
340 promisor's business to furnish support to the debtor or another person.

341 (2) Under Subsection ~~[25-6-5]~~ 25-6-202(1)(b) and Section ~~[25-6-6]~~ 25-6-203, a person  
342 gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset  
343 pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale  
344 for the acquisition or disposition of the interest of the debtor upon default under a mortgage,  
345 deed of trust, or security agreement.

346 (3) A transfer is made for present value if the exchange between the debtor and the  
347 transferee is intended by them to be contemporaneous and is ~~[in fact]~~ substantially  
348 contemporaneous.

349 Section 6. Section **25-6-201** is enacted to read:

350 **Part 2. Voidable Transfer or Obligation**

351 **25-6-201. Title.**

352 This part is known as "Voidable Transfer or Obligation."

353 Section 7. Section **25-6-202**, which is renumbered from Section 25-6-5 is renumbered  
354 and amended to read:

355 ~~[25-6-5]~~. **25-6-202. Voidable transfer or obligation -- Present or future**  
356 **creditor -- Determination of intent -- Burden of proof.**

357 (1) A transfer made or obligation incurred by a debtor is ~~[fraudulent]~~ voidable as to a  
358 creditor, whether the creditor's claim arose before or after the transfer was made or the  
359 obligation was incurred, if the debtor made the transfer or incurred the obligation:

360 (a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

361 (b) without receiving a reasonably equivalent value in exchange for the transfer or  
362 obligation~~;~~, and the debtor:

363 (i) was engaged or was about to engage in a business or a transaction for which the  
364 remaining assets of the debtor were unreasonably small in relation to the business or  
365 transaction; or

366 (ii) intended to incur, or believed or reasonably should have believed that ~~[he]~~ the

367 debtor would incur, debts beyond [~~his~~] the debtor's ability to pay as they became due.

368 (2) To determine "actual intent" under Subsection (1)(a), consideration may be given,  
369 among other factors, to whether:

370 (a) the transfer or obligation was to an insider;

371 (b) the debtor retained possession or control of the property transferred after the  
372 transfer;

373 (c) the transfer or obligation was disclosed or concealed;

374 (d) before the transfer was made or obligation was incurred, the debtor had been sued  
375 or threatened with suit;

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

377 (f) the debtor absconded;

378 (g) the debtor removed or concealed assets;

379 (h) the value of the consideration received by the debtor was reasonably equivalent to  
380 the value of the asset transferred or the amount of the obligation incurred;

381 (i) the debtor was insolvent or became insolvent shortly after the transfer was made or  
382 the obligation was incurred;

383 (j) the transfer occurred shortly before or shortly after a substantial debt was incurred;  
384 and

385 (k) the debtor transferred the essential assets of the business to a lienor [~~who~~] that  
386 transferred the assets to an insider of the debtor.

387 (3) A creditor making a claim for relief under Subsection (1) has the burden of proving  
388 the elements of the claim for relief by a preponderance of the evidence.

389 Section 8. Section **25-6-203**, which is renumbered from Section 25-6-6 is renumbered  
390 and amended to read:

391 ~~[25-6-6]~~. **25-6-203. Transfer or obligation voidable -- Present creditor --**  
392 **Burden of proof.**

393 (1) A transfer made or obligation incurred by a debtor is [~~fraudulent~~] voidable as to a  
394 creditor whose claim arose before the transfer was made or the obligation was incurred if:

395 (a) the debtor made the transfer or incurred the obligation without receiving a  
396 reasonably equivalent value in exchange for the transfer or obligation; and

397 (b) the debtor was insolvent at the time or became insolvent as a result of the transfer

398 or obligation.

399 (2) A transfer made by a debtor is [~~fraudulent~~] voidable as to a creditor whose claim  
400 arose before the transfer was made if the transfer was made to an insider for an antecedent debt,  
401 the debtor was insolvent at the time, and the insider had reasonable cause to believe that the  
402 debtor was insolvent.

403 (3) Subject to Subsection 25-6-103(2), a creditor making a claim for relief under  
404 Subsection (1) or (2) has the burden of proving the elements of the claim for relief by a  
405 preponderance of the evidence.

406 Section 9. Section **25-6-301** is enacted to read:

407 **Part 3. Transfers and Remedies**

408 **25-6-301. Title.**

409 This part is known as "Transfers and Remedies."

410 Section 10. Section **25-6-302**, which is renumbered from Section 25-6-7 is renumbered  
411 and amended to read:

412 [~~25-6-7~~]. **25-6-302. Transfer -- When made.**

413 In this chapter:

414 (1) [~~A~~] a transfer is made:

415 (a) with respect to an asset that is real property other than a fixture, but including the  
416 interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so  
417 far perfected that a good faith purchaser of the asset from the debtor against [~~whom~~] which  
418 applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is  
419 superior to the interest of the transferee; and

420 (b) with respect to an asset that is not real property or that is a fixture, when the  
421 transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien  
422 other than under this chapter that is superior to the interest of the transferee[-];

423 (2) [~~H~~] if applicable law permits the transfer to be perfected as provided in Subsection  
424 (1) and the transfer is not so perfected before the commencement of an action for relief under  
425 this chapter, the transfer is deemed made immediately before the commencement of the  
426 action[-];

427 (3) [~~H~~] if applicable law does not permit the transfer to be perfected as provided in  
428 Subsection (1), the transfer is made when it becomes effective between the debtor and the

429 transferee[-];

430 (4) [~~A~~] a transfer is not made until the debtor has acquired rights in the asset

431 transferred[-]; and

432 (5) [~~An~~] an obligation is incurred:

433 (a) if oral, when it becomes effective between the parties; or

434 (b) if evidenced by a [~~writing~~] record, when the [~~writing-executed~~] record signed by the  
435 obligor is delivered to or for the benefit of the obligee.

436 Section 11. Section **25-6-303**, which is renumbered from Section 25-6-8 is renumbered  
437 and amended to read:

438 [~~25-6-8~~]. **25-6-303. Remedies of creditors.**

439 (1) In an action for relief against a transfer or obligation under this chapter, a creditor,  
440 subject to the limitations in Section [~~25-6-9~~] [25-6-304](#), may obtain:

441 (a) avoidance of the transfer or obligation to the extent necessary to satisfy the  
442 creditor's claim;

443 (b) an attachment or other provisional remedy against the asset transferred or other  
444 property of the transferee [~~in accordance with the procedure prescribed by the Utah Rules of~~  
445 ~~Civil Procedure~~] if available under applicable law;

446 (c) subject to applicable principles of equity and in accordance with applicable rules of  
447 civil procedure:

448 (i) an injunction against further disposition by the debtor or a transferee, or both, of the  
449 asset transferred or of other property;

450 (ii) appointment of a receiver to take charge of the asset transferred or of other property  
451 of the transferee; or

452 (iii) any other relief the circumstances may require.

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

455 Section 12. Section **25-6-304**, which is renumbered from Section 25-6-9 is renumbered  
456 and amended to read:

457 [~~25-6-9~~]. **25-6-304. Good faith transfer.**

458 (1) Except as otherwise provided in this section, a transfer or obligation is not voidable  
459 under Subsection [~~25-6-5~~] [25-6-202](#)(1)(a) against a person [~~who~~] that took in good faith and for

460 a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

461 (2) Except as otherwise provided in this section, to the extent a transfer is [~~voidable~~]  
462 avoidable in an action by a creditor under Subsection [~~25-6-8~~] 25-6-303(1)(a), the following  
463 rules apply:

464 (a) the creditor may recover judgment for the value of the asset transferred, as adjusted  
465 under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is  
466 less[:]; and

467 (b) the judgment may be entered against:

468 [~~(a)~~] (i) the first transferee of the asset or the person for whose benefit the transfer was  
469 made; or

470 [~~(b) any subsequent transferee other than~~]

471 (ii) an immediate or mediate transferee of the first transferee, other than:

472 (A) a good faith transferee [~~who~~] that took for value; or [~~from any subsequent~~  
473 ~~transferee.~~]

474 (B) an immediate or mediate good faith transferee of a person described in Subsection  
475 (2)(a)(ii)(A); and

476 (c) recovery under Subsection 25-6-303(1)(a) or (2) of or from the asset transferred or  
477 its proceeds, by levy or otherwise, is available only against a person described in Subsection  
478 (2)(b)(i) or (ii).

479 (3) If the judgment under Subsection (2) is based upon the value of the asset  
480 transferred, the judgment shall be for an amount equal to the value of the asset at the time of  
481 the transfer, subject to an adjustment as equities may require.

482 (4) Except as otherwise provided in this section, notwithstanding the voidability of a  
483 transfer or an obligation under this chapter, a [~~good-faith~~] good faith transferee or obligee is  
484 entitled, to the extent of the value given the debtor for the transfer or obligation, to:

485 (a) a lien on or a right to retain [~~any~~] an interest in the asset transferred;

486 (b) enforcement of [~~any~~] an obligation incurred; or

487 (c) a reduction in the amount of the liability on the judgment.

488 (5) A transfer is not voidable under Subsection [~~25-6-5~~] 25-6-202(1)(b) or Section  
489 [~~25-6-6~~] 25-6-203 if the transfer results from:

490 (a) termination of a lease upon default by the debtor when the termination is pursuant



491 to the lease and applicable law; or

492 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a,  
493 Uniform Commercial Code - Secured Transactions, other than acceptance of collateral in full  
494 or partial satisfaction of the obligation it secures.

495 (6) Except as otherwise provided in this section, a transfer is not voidable under  
496 Subsection [~~25-6-6~~] 25-6-203(2):

497 (a) to the extent the insider gave new value to or for the benefit of the debtor after the  
498 transfer was made [~~unless~~], except to the extent the new value was secured by a valid lien;

499 (b) if made in the ordinary course of business or financial affairs of the debtor and the  
500 insider; or

501 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer  
502 secured present value given for that purpose as well as an antecedent debt of the debtor.

503 (7) [~~Notwithstanding the foregoing, a~~] A transfer is not voidable under Section  
504 [~~25-6-5~~] 25-6-202 or Subsection [~~25-6-6~~] 25-6-203(1) if:

505 (a) the transfer was made by the debtor:

506 (i) in payment of or in exchange for goods, services, or other consideration obtained by  
507 the debtor or a third party from a merchant in the ordinary course of the merchant's business; or

508 (ii) in payment of amounts loaned or advanced by a merchant or a credit or financing  
509 company to pay for the goods, services, or other consideration obtained by the debtor or a third  
510 party from a merchant in the ordinary course of the merchant's business;

511 (b) the goods, services, or other consideration obtained from the merchant or the  
512 amounts loaned or advanced by the merchant or the credit or financing company in payment of  
513 the goods, services, or other consideration obtained from the merchant in the ordinary course of  
514 the merchant's business was of a reasonably equivalent value to the transfer, as provided in  
515 Subsection (8); and

516 (c) the transferee received the transfer in good faith, in the ordinary course of the  
517 transferee's business, and without actual knowledge that:

518 (i) the transfer was made by the debtor with actual intent to hinder, delay, or defraud  
519 any creditor of the debtor; or

520 (ii) that the debtor was insolvent at the time the transfer was made.

521 (8) For purposes of Subsection (7):

522 (a) the term "merchant" means the same as that term is defined in Section 70A-2-104;

523 (b) where the value of the goods, services, or other consideration obtained from the  
524 merchant, or where the value of the amounts loaned or advanced by a merchant or a credit or  
525 financing company in payment of the goods, services, or other consideration obtained from the  
526 merchant, was reasonably equivalent to the value of the transfer, the "reasonably equivalent  
527 value" requirement in Subsection (7)(b) will be satisfied regardless of whether the debtor or a  
528 third party received the reasonably equivalent value for the transfer; and

529 (c) a transferee's receipt of payment from a debtor is not, and may not be used as,  
530 evidence that:

531 (i) the transferee did not act in good faith;

532 (ii) the goods, services, or other consideration were not provided by the merchant in the  
533 ordinary course of the merchant's business;

534 (iii) the transferee had actual knowledge that the transfer was made by the debtor with  
535 actual intent to hinder, delay, or defraud any creditor of the debtor; or

536 (iv) the debtor was insolvent at the time the transfer was made.

537 (9) The following rules determine the burden of proving matters referred to in this  
538 section:

539 (a) a party that seeks to invoke Subsection (1), (4), (5), or (6) has the burden of proving  
540 the applicability of that subsection;

541 (b) except as otherwise provided in Subsections (9)(c) and (d), the creditor has the  
542 burden of proving each applicable element of Subsection (2) or (3);

543 (c) the transferee has the burden of proving the applicability to the transferee of  
544 Subsection (2)(a)(ii)(A) or (B); and

545 (d) a party that seeks adjustment under Subsection (3) has the burden of proving the  
546 adjustment.

547 (10) The standard of proof required to establish matters referred to in this section is a  
548 preponderance of the evidence.

549 Section 13. Section **25-6-305**, which is renumbered from Section 25-6-10 is  
550 renumbered and amended to read:

551 **[25-6-10]. 25-6-305. Claim for relief -- Time limits.**

552 A claim for relief [~~or cause of action~~] regarding a [~~fraudulent~~] transfer or obligation

553 under this chapter is extinguished unless action is brought:

554 (1) under Subsection [~~25-6-5~~] 25-6-202(1)(a), [~~within~~] no later than four years after the  
555 transfer was made or the obligation was incurred or, if later, [~~within~~] no later than one year  
556 after the transfer or obligation was or could reasonably have been discovered by the claimant;

557 (2) under Subsection [~~25-6-5~~] 25-6-202(1)(b) or [~~25-6-6~~] 25-6-203(1), [~~within~~] no later  
558 than four years after the transfer was made or the obligation was incurred; or

559 (3) under Subsection [~~25-6-6~~] 25-6-203(2), [~~within~~] no later than one year after the  
560 transfer was made [~~or the obligation was incurred~~].

561 Section 14. Section **25-6-401** is enacted to read:

#### 562 **Part 4. Applicability and Construction**

##### 563 **25-6-401. Title.**

564 This part is known as "Applicability and Construction."

565 Section 15. Section **25-6-402** is enacted to read:

##### 566 **25-6-402. Governing law.**

567 (1) In this section, the following rules determine the debtor's location:

568 (a) a debtor who is an individual is located at the individual's principal residence;

569 (b) a debtor that is an organization and has only one place of business is located at its  
570 place of business; and

571 (c) a debtor that is an organization and has more than one place of business is located  
572 at its chief executive office.

573 (2) A claim for relief in the nature of a claim for relief under this chapter is governed  
574 by the local law of the jurisdiction in which the debtor is located when the transfer is made or  
575 the obligation is incurred.

576 Section 16. Section **25-6-403** is enacted to read:

##### 577 **25-6-403. Application to series organization.**

578 (1) As used in this section:

579 (a) "Protected series" means an arrangement, however denominated, created by a series  
580 organization that, pursuant to the law under which the series organization is organized, has the  
581 characteristics described in Subsection (1)(b).

582 (b) "Series organization" means an organization that, pursuant to the law under which  
583 it is organized, has the following characteristics:

584 (i) the organic record of the organization provides for creation by the organization of  
585 one or more protected series, however denominated, with respect to specified property of the  
586 organization, and for records to be maintained for each protected series that identify the  
587 property of or associated with the protected series;

588 (ii) debt incurred or existing with respect to the activities of, or property of or  
589 associated with, a particular protected series is enforceable against the property of or associated  
590 with the protected series only, and not against the property of or associated with the  
591 organization or other protected series of the organization; and

592 (iii) debt incurred or existing with respect to the activities or property of the  
593 organization is enforceable against the property of the organization only, and not against the  
594 property of or associated with a protected series of the organization.

595 (2) A series organization and each protected series of the organization is a separate  
596 person for purposes of this chapter, even if for other purposes a protected series is not a person  
597 separate from the organization or other protected series of the organization.

598 Section 17. Section **25-6-404**, which is renumbered from Section 25-6-11 is  
599 renumbered and amended to read:

600 **[25-6-11]. 25-6-404. Legal principles applicable to chapter.**

601 Unless displaced by this chapter, the principles of law and equity, including merchant  
602 law and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud,  
603 misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating  
604 cause, supplement this chapter's provisions.

605 Section 18. Section **25-6-405**, which is renumbered from Section 25-6-12 is  
606 renumbered and amended to read:

607 **[25-6-12]. 25-6-405. Construction of chapter.**

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

610 Section 19. Section **25-6-406**, which is renumbered from Section 25-6-13 is  
611 renumbered and amended to read:

612 **[25-6-13]. 25-6-406. Applicability of chapter.**

613 (1) This [act] chapter applies when any transfer occurs after the effective date of this  
614 act.

- 615 (2) The amendments to this chapter that take effect on May 9, 2017:
- 616 (a) apply to a transfer made or obligation incurred on or after May 9, 2017;
- 617 (b) do not apply to a transfer made or obligation incurred before May 9, 2017; and
- 618 (c) do not apply to a right of action that has accrued before May 9, 2017.
- 619 (3) For purposes of Subsection (2), a transfer is made and an obligation is incurred at
- 620 the time provided in Section [25-6-302](#).

621 Section 20. Section **25-6-407** is enacted to read:

622 **25-6-407. Relation to Electronic Signatures in Global and National Commerce**

623 **Act.**

624 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and  
625 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede  
626 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the  
627 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

628 Section 21. Section **25-6-501** is enacted to read:

629 **Part 5. Asset Protection Trust**

630 **25-6-501. Title.**

631 This part is known as "Asset Protection Trust."

632 Section 22. Section **25-6-502**, which is renumbered from Section 25-6-14 is  
633 renumbered and amended to read:

634 **[25-6-14]. 25-6-502. Asset protection trust.**

635 (1) As used in this section:

636 (a) "Creditor" means:

637 (i) a creditor or other claimant of the settlor existing when the trust is created; or

638 (ii) a person who subsequently becomes a creditor, including, whether or not reduced  
639 to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,  
640 undisputed, legal, equitable, secured, or unsecured:

641 (A) one holding or seeking to enforce a judgment entered by a court or other body  
642 having adjudicative authority; or

643 (B) one with a right to payment.

644 (b) "Property" means real property, personal property, and interests in real or personal  
645 property.

646 (c) "Settlor" means a person who transfers property in trust.

647 (d) "Transfer" means any form of transfer of property, including gratuitous transfers,  
648 whether by deed, conveyance, or assignment.

649 (e) "Trust" has the same meaning as in Section 75-1-201.

650 (2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use  
651 or occupancy of real property or tangible personal property owned by the trust if the use or  
652 occupancy is in accordance with the trustee's discretionary authority under the trust instrument.

653 (3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the  
654 requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

655 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's  
656 transfer to the trust or the settlor's beneficial interest in the trust;

657 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

658 (c) require the trustee to pay any distribution directly to the creditor, or otherwise  
659 attach the distribution before it has been paid or delivered by the trustee to the settlor, as  
660 beneficiary.

661 (4) Notwithstanding Subsection (3), nothing in this section prohibits a creditor from  
662 satisfying a claim or liability from the distribution once it has been paid or delivered by the  
663 trustee to the settlor, as beneficiary.

664 (5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be  
665 satisfied. Where this Subsection (5) requires that a provision be included in the trust  
666 instrument, no particular language need be used in the trust instrument if the meaning of the  
667 trust provision otherwise complies with this Subsection (5).

668 (a) The trust instrument shall provide that the trust is governed by Utah law and is  
669 established pursuant to this section.

670 (b) The trust instrument shall require that at all times at least one trustee shall be a  
671 Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

672 (c) The trust instrument shall provide that neither the interest of the settlor, as  
673 beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily  
674 transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction  
675 on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable  
676 nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code.

677 (d) The settlor may not have the ability under the trust instrument to revoke, amend, or  
678 terminate all or any part of the trust, or to withdraw property from the trust, without the consent  
679 of a person who has a substantial beneficial interest in the trust, which interest would be  
680 adversely affected by the exercise of the power held by the settlor.

681 (e) The trust instrument may not provide for any mandatory distributions of either  
682 income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(f).

683 (f) The settlor may not benefit from, direct a distribution of, or use trust property  
684 except as stated in the trust instrument. An agreement or understanding, express or implied,  
685 between the settlor and the trustee that attempts to grant or permit the retention of greater rights  
686 or authority than is stated in the trust instrument is void.

687 (g) The trust instrument shall require that, at least 30 days before making any  
688 distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a  
689 child support judgment or order against the settlor. The trust instrument shall require that the  
690 notice state the date the distribution will be made and the amount of the distribution.

691 (h) At the time that the settlor transfers any assets to the trust, the settlor may not be in  
692 default of making a payment due under any child support judgment or order.

693 (i) A transfer of assets to the trust may not render the settlor insolvent.

694 (j) At the time the settlor transfers any assets to the trust, the settlor may not intend to  
695 hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's  
696 expressed intention to protect trust assets from the settlor's potential future creditors is not  
697 evidence of an intent to hinder, delay, or defraud a known creditor.

698 (k) At the time that the settlor transfers any assets to the trust, the settlor may not be  
699 contemplating filing for relief under the provisions of the Bankruptcy Code.

700 (l) Assets transferred to the trust may not be derived from unlawful activities.

701 (m) At the time the settlor transfers any assets to the trust, the settlor shall sign a sworn  
702 affidavit stating that:

703 (i) the settlor has full right, title, and authority to transfer the assets to the trust;

704 (ii) the transfer of the assets to the trust will not render the settlor insolvent;

705 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by  
706 transferring the assets to the trust;

707 (iv) there are no pending or threatened court actions against the settlor, except for those

708 court actions identified by the settlor on an attachment to the affidavit;

709 (v) the settlor is not involved in any administrative proceedings, except those  
710 administrative proceedings identified on an attachment to the affidavit;

711 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a  
712 child support obligation;

713 (vii) the settlor does not contemplate filing for relief under the provisions of the  
714 Bankruptcy Code; and

715 (viii) the assets being transferred to the trust were not derived from unlawful activities.

716 (6) Failure to satisfy the requirements of Subsection (5) shall result in the  
717 consequences described in this Subsection (6).

718 (a) If any requirement of Subsections (5)(a) through (g) is not satisfied, none of the  
719 property held in the trust will at any time have the benefit of the protections described in  
720 Subsection (3).

721 (b) If the trustee does not send the notice required under Subsection (5)(g), the court  
722 may authorize any person with a child support judgment or order against the settlor to whom  
723 notice was not sent to attach the distribution or future distributions, but the person may not:

724 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the  
725 trust or the settlor's beneficial interest in the trust; or

726 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

727 (c) If any requirement set forth in Subsections (5)(h) through (m) is not satisfied, the  
728 property transferred to the trust that does not satisfy the requirement may not have the benefit  
729 of the protections described in Subsection (3).

730 (7) The provisions of Subsection (3) may apply to a trust even if:

731 (a) the settlor serves as a cotrustee or as an advisor to the trustee, provided that the  
732 settlor may not participate in the determination as to whether a discretionary distribution will  
733 be made;

734 (b) the settlor has the authority under the terms of the trust instrument to appoint  
735 nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can  
736 direct, consent to, or disapprove distributions;

737 (c) the settlor has the power under the terms of the trust instrument to serve as an  
738 investment director or to appoint an investment director under Section [75-7-906](#);



739 (d) the trust instrument gives the settlor the power to veto a distribution from the trust;

740 (e) the trust instrument gives the settlor a testamentary nongeneral power of

741 appointment or similar power;

742 (f) the trust instrument gives the settlor the right to receive the following types of

743 distributions:

744 (i) income, principal, or both in the discretion of a person, including a trustee, other  
745 than the settlor;

746 (ii) principal, subject to an ascertainable standard set forth in the trust;

747 (iii) income or principal from a charitable remainder annuity trust or charitable  
748 remainder unitrust, as defined in 26 U.S.C. 664;

749 (iv) a percentage of the value of the trust each year as determined under the trust  
750 instrument, but not exceeding the amount that may be defined as income under 26 U.S.C.

751 643(b);

752 (v) the transferor's potential or actual use of real property held under a qualified  
753 personal residence trust, or potential or actual possession of a qualified annuity interest, within  
754 the meaning of 26 U.S.C. 2702 and the accompanying regulations; and

755 (vi) income or principal from a grantor retained annuity trust or grantor retained  
756 unitrust that is allowed under 26 U.S.C. 2702; or

757 (g) the trust instrument authorizes the settlor to use real or personal property owned by  
758 the trust.

759 (8) If a trust instrument contains the provisions described in Subsections (5)(a) through  
760 (g), the transfer restrictions prevent a creditor or other person from asserting any cause of  
761 action or claim for relief against a trustee of the trust or against others involved in the  
762 counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit  
763 fraudulent conveyance, aiding and abetting a fraudulent conveyance, participation in the trust  
764 transaction, or similar cause of action or claim for relief. For purposes of this subsection,  
765 counseling, drafting, preparation, execution, or funding of the trust includes the preparation and  
766 funding of a limited partnership, a limited liability company, or other entity if interests in the  
767 entity are subsequently transferred to the trust. The creditor and other person prevented from  
768 asserting a cause of action or claim for relief may assert a cause of action against, and are  
769 limited to recourse against, only:

770 (a) the trust and the trust assets; and

771 (b) the settlor, to the extent otherwise allowed in this section.

772 (9) A cause of action or claim for relief regarding a fraudulent transfer of a settlor's  
773 assets under Subsection (5)(j) is extinguished unless the action under Subsection (5)(j) is  
774 brought by a creditor of the settlor who was a creditor of the settlor before the assets referred to  
775 in Subsection (5)(j) were transferred to the trust and the action under Subsection (5)(j) is  
776 brought within the earlier of:

777 (a) the later of:

778 (i) two years after the transfer is made; or

779 (ii) one year after the transfer is or reasonably could have been discovered by the  
780 creditor if the creditor:

781 (A) can demonstrate, by a preponderance of the evidence, that the creditor asserted a  
782 specific claim against the settlor before the transfer; or

783 (B) files another action, other than an action under Subsection (5)(j), against the settlor  
784 that asserts a claim based on an act or omission of the settlor that occurred before the transfer,  
785 and the action described in this Subsection (9) is filed within two years after the transfer.

786 (b) (i) with respect to a creditor known to the settlor, 120 days after the date on which  
787 notice of the transfer is mailed to the creditor, which notice shall state the name and address of  
788 the settlor, the name and address of the trustee, and also describe the assets that were  
789 transferred, but does not need to state the value of those assets if the assets are other than cash,  
790 and which shall inform the creditor that he is required to present his claim to both the settlor  
791 and the trustee within 120 days from the mailing of the notice or be forever barred; or

792 (ii) with respect to a creditor not known to the settlor, 120 days after the date on which  
793 notice of the transfer is first published in a newspaper of general circulation in the county in  
794 which the settlor then resides, which notice shall state the name and address of the settlor, the  
795 name and address of the trustee, and also describe the assets that were transferred, but does not  
796 need to state the value of those assets if the assets are other than cash.

797 (10) The notice required in Subsection (9)(b) shall be published in accordance with the  
798 provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are  
799 required to present claims within 120 days from the first publication of the notice or be forever  
800 barred.

801 (11) (a) A trust is subject to this section if it is governed by Utah law, as provided in  
802 Section 75-7-107, and if it otherwise meets the requirements of this section.

803 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that  
804 is based on a transfer of property to a trust that is the subject of this section.

805 Section 23. Section 31A-27a-507 is amended to read:

806 **31A-27a-507. Receiver as lien creditor.**

807 (1) The receiver may avoid a transfer of or lien on the property of, or obligation  
808 incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of  
809 the insurer:

810 (a) may have avoided without regard to any knowledge of:

811 (i) the receiver;

812 (ii) the commissioner;

813 (iii) the insurer; or

814 (iv) a policyholder, creditor, member, or stockholder of the insurer; and

815 (b) whether or not a policyholder, creditor, member, or stockholder described in this  
816 Subsection (1) exists.

817 (2) The receiver is considered a creditor without knowledge for purposes of pursuing  
818 claims under:

819 (a) Title 25, Chapter 6, Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act; or

820 (b) similar provisions of state or federal law.

821 Section 24. Section 70A-2-402 is amended to read:

822 **70A-2-402. Rights of seller's creditors against sold goods.**

823 (1) Except as provided in Subsections (2) and (3), rights of unsecured creditors of the  
824 seller with respect to goods which have been identified to a contract for sale are subject to the  
825 buyer's rights to recover the goods under this chapter (Sections 70A-2-502 and 70A-2-716).

826 (2) A creditor of the seller may treat a sale or an identification of goods to a contract  
827 for sale as void if as against him a retention of possession by the seller is fraudulent under any  
828 rule of law of the state where the goods are situated, except that retention of possession in good  
829 faith and current course of trade by a merchant-seller for a commercially reasonable time after  
830 a sale or identification is not fraudulent.

831 (3) Nothing in this chapter shall be deemed to impair the rights of creditors of the

832 seller:

833 (a) under the provisions of the chapter on Secured Transactions (Chapter 9a, Uniform  
834 Commercial Code - Secured Transactions); or

835 (b) where identification to the contract or delivery is made not in current course of  
836 trade but in satisfaction of or as security for a preexisting claim for money, security or the like  
837 and is made under circumstances which under any rule of law of the state where the goods are  
838 situated would apart from this chapter constitute the transaction a [~~fraudulent transfer~~] voidable  
839 transaction or voidable preference.

840 Section 25. Section **70A-2a-308** is amended to read:

841 **70A-2a-308. Special rights of creditors.**

842 (1) A creditor of a lessor in possession of goods subject to a lease contract may treat  
843 the lease contract as void if as against the creditor retention of possession by the lessor is  
844 fraudulent or voids the lease contract under any statute or rule of law, but retention of  
845 possession in good faith and current course of trade by the lessor for a commercially reasonable  
846 time after the lease contract becomes enforceable is not fraudulent and does not void the lease  
847 contract.

848 (2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease  
849 contract is made under circumstances which under any statute or rule of law apart from the  
850 chapter would constitute the transaction a [~~fraudulent transfer~~] voidable transaction or voidable  
851 preference.

852 (3) A creditor of a seller may treat a sale or an identification of goods to a contract for  
853 sale as void if as against the creditor retention of possession by the seller is fraudulent under  
854 any statute or rule of law, but retention of possession of the goods pursuant to a lease contract  
855 entered into by the seller as lessee and the buyer as lessor in connection with the sale or  
856 identification of the goods is not fraudulent if the buyer bought for value and in good faith.

857 Section 26. Section **75-2-205** is amended to read:

858 **75-2-205. Decedent's nonprobate transfers to others.**

859 Unless excluded under Section [75-2-208](#), the value of the augmented estate includes the  
860 value of the decedent's nonprobate transfers to others, not included under Section [75-2-204](#), of  
861 any of the types described in this section, in the amount provided respectively for each type of  
862 transfer:

863 (1) Property owned or owned in substance by the decedent immediately before death  
864 that passed outside probate at the decedent's death. Property included under this category  
865 consists of the property described in this Subsection (1).

866 (a) (i) Property over which the decedent alone, immediately before death, held a  
867 presently exercisable general power of appointment.

868 (ii) The amount included is the value of the property subject to the power, to the extent  
869 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,  
870 to or for the benefit of any person other than the decedent's estate or surviving spouse.

871 (b) (i) The decedent's fractional interest in property held by the decedent in joint  
872 tenancy with the right of survivorship.

873 (ii) The amount included is the value of the decedent's fractional interest, to the extent  
874 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint  
875 tenant other than the decedent's surviving spouse.

876 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or  
877 co-ownership registration with the right of survivorship.

878 (ii) The amount included is the value of the decedent's ownership interest, to the extent  
879 the decedent's ownership interest passed at the decedent's death to or for the benefit of any  
880 person other than the decedent's estate or surviving spouse.

881 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the  
882 decedent, if the decedent owned the insurance policy immediately before death or if and to the  
883 extent the decedent alone and immediately before death held a presently exercisable general  
884 power of appointment over the policy or its proceeds.

885 (ii) The amount included:

886 (A) is the value of the proceeds, to the extent they were payable at the decedent's death  
887 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

888 (B) may not exceed the greater of the cash surrender value of the policy immediately  
889 prior to the death of the decedent or the amount of premiums paid on the policy during the  
890 decedent's life.

891 (2) Property transferred in any of the forms described in this Subsection (2) by the  
892 decedent during marriage:

893 (a) (i) Any irrevocable transfer in which the decedent retained the right to the

894 possession or enjoyment of, or to the income from, the property if and to the extent the  
895 decedent's right terminated at or continued beyond the decedent's death.

896 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the  
897 decedent's interest as settlor and beneficiary as described in Section [~~25-6-14~~] [25-6-502](#).

898 (iii) The amount included is the value of the fraction of the property to which the right  
899 or restriction related, to the extent the fraction of the property passed outside probate to or for  
900 the benefit of any person other than the decedent's estate or surviving spouse.

901 (b) (i) Any transfer in which the decedent created a power over income or property,  
902 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a  
903 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's  
904 estate, or creditors of the decedent's estate.

905 (ii) The amount included with respect to a power over property is the value of the  
906 property subject to the power, and the amount included with respect to a power over income is  
907 the value of the property that produces or produced the income, to the extent the power in  
908 either case was exercisable at the decedent's death to or for the benefit of any person other than  
909 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by  
910 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than  
911 the decedent's estate or surviving spouse.

912 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)  
913 produces different amounts, the amount included is the greater amount.

914 (3) Property that passed during marriage and during the two-year period next preceding  
915 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the  
916 types described in this Subsection (3).

917 (a) (i) Any property that passed as a result of the termination of a right or interest in, or  
918 power over, property that would have been included in the augmented estate under Subsection  
919 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated  
920 until the decedent's death.

921 (ii) The amount included is the value of the property that would have been included  
922 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the  
923 right, interest, or power terminated, and is included only to the extent the property passed upon  
924 termination to or for the benefit of any person other than the decedent or the decedent's estate,

925 spouse, or surviving spouse.

926 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or  
927 interest in property, occurs when the right or interest terminated by the terms of the governing  
928 instrument or the decedent transferred or relinquished the right or interest, and, with respect to  
929 a power over property, occurs when the power terminated by exercise, release, lapse, default, or  
930 otherwise.

931 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when  
932 the power terminated by exercise or release, but not otherwise.

933 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if  
934 the proceeds would have been included in the augmented estate under Subsection (1)(d) had  
935 the transfer not occurred.

936 (ii) The amount included:

937 (A) is the value of the insurance proceeds to the extent the proceeds were payable at  
938 the decedent's death to or for the benefit of any person other than the decedent's estate or  
939 surviving spouse; and

940 (B) may not exceed the greater of the cash surrender value of the policy immediately  
941 prior to the death of the decedent or the amount of premiums paid on the policy during the  
942 decedent's life.

943 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented  
944 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

945 (ii) The amount included is the value of the transferred property to the extent the  
946 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

947 Section 27. Section **75-7-105** is amended to read:

948 **75-7-105. Default and mandatory rules.**

949 (1) Except as otherwise provided in the terms of the trust, this chapter governs the  
950 duties and powers of a trustee, relations among trustees, and the rights and interests of a  
951 beneficiary.

952 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any  
953 provision of this chapter except:

954 (a) the requirements for creating a trust;

955 (b) the duty of a trustee to act in good faith and in accordance with the purposes of the

956 trust;

957 (c) the requirement that a trust and its terms be for the benefit of its beneficiaries;

958 (d) the power of the court to modify or terminate a trust under Sections 75-7-410  
959 through 75-7-416;

960 (e) the effect of a spendthrift provision, Section ~~[25-6-14]~~ 25-6-502, and the rights of  
961 certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims -  
962 Spendthrift and Discretionary Trusts;

963 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify  
964 or terminate a bond;

965 (g) the effect of an exculpatory term under Section 75-7-1008;

966 (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a  
967 trustee or beneficiary;

968 (i) periods of limitation for commencing a judicial proceeding; and

969 (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding  
970 as provided in Sections 75-7-203 and 75-7-205.

971 Section 28. Section 75-7-107 is amended to read:

972 **75-7-107. Governing law.**

973 (1) For purposes of this section:

974 (a) "Foreign trust" means a trust that is created in another state or country and valid in  
975 the state or country in which the trust is created.

976 (b) "State law provision" means a provision that the laws of a named state govern the  
977 validity, construction, and administration of a trust.

978 (2) If a trust has a state law provision specifying this state, the validity, construction,  
979 and administration of the trust are to be governed by the laws of this state if any administration  
980 of the trust is done in this state.

981 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state  
982 law provision, the validity, construction, and administration of the trust are to be governed by  
983 the laws of this state if the trust is administered in this state.

984 (4) A trust shall be considered to be administered in this state if:

985 (a) the trust states that this state is the place of administration, and any administration  
986 of the trust is done in this state; or



987 (b) the place of business where the fiduciary transacts a major portion of its  
988 administration of the trust is in this state.

989 (5) If a foreign trust is administered in this state as provided in this section, the  
990 following provisions are effective and enforceable under the laws of this state:

991 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar  
992 to Section [~~25-6-14~~] [25-6-502](#);

993 (b) a provision that allows the trust to be perpetual; or

994 (c) a provision that is not expressly prohibited by the law of this state.

995 (6) A foreign trust that moves its administration to this state is valid whether or not the  
996 trust complied with the laws of this state at the time of the trust's creation or after the trust's  
997 creation.

998 (7) Unless otherwise designated in the trust instrument, a trust is administered in this  
999 state if it meets the requirements of Subsection (4).

1000 Section 29. Section **75-7-301** is amended to read:

1001 **75-7-301. Basic effect.**

1002 (1) Notice to a person who may represent and bind another person under this part has  
1003 the same effect as if notice were given directly to the other person.

1004 (2) The consent of a person who may represent and bind another person under this part  
1005 is binding on the person represented unless the person represented objects to the representation  
1006 before the consent would otherwise have become effective.

1007 (3) Except as otherwise provided in Sections [75-7-411](#) and [~~25-6-14~~] [25-6-502](#), a  
1008 person who under this part may represent a settlor who lacks capacity may receive notice and  
1009 give a binding consent on the settlor's behalf.

1010 Section 30. Section **75-7-501** is amended to read:

1011 **75-7-501. Rights of beneficiary's creditor or assignee.**

1012 To the extent a beneficiary's interest is not protected by a spendthrift provision or  
1013 Section [~~25-6-14~~] [25-6-502](#), the court may authorize a creditor or assignee of the beneficiary to  
1014 reach the beneficiary's interest by attachment of present or future distributions to or for the  
1015 benefit of the beneficiary or other means. The court may limit the award to relief as is  
1016 appropriate under the circumstances.

1017 Section 31. Section **75-7-505** is amended to read:

1018 **75-7-505. Creditor's claim against settlor.**

1019 (1) Whether or not the terms of a trust contain a spendthrift provision, the following  
1020 rules apply:

1021 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the  
1022 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or  
1023 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of  
1024 the trust attributable to that settlor's contribution.

1025 (b) With respect to an irrevocable trust other than an irrevocable trust that meets the  
1026 requirements of Section [~~25-6-14~~] 25-6-502, a creditor or assignee of the settlor may reach the  
1027 maximum amount that can be distributed to or for the settlor's benefit. If the trust has more  
1028 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not  
1029 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

1030 (c) After the death of a settlor, and subject to the settlor's right to direct the source from  
1031 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but  
1032 not property received by the trust as a result of the death of the settlor which is otherwise  
1033 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,  
1034 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal  
1035 of remains, and statutory allowances to a surviving spouse and children to the extent the  
1036 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1037 (2) For purposes of this section:

1038 (a) during the period the power may be exercised, the holder of a power of withdrawal  
1039 is treated in the same manner as the settlor of a revocable trust to the extent of the property  
1040 subject to the power; and

1041 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of  
1042 the trust only to the extent the value of the property affected by the lapse, release, or waiver  
1043 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section  
1044 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

1045 Section 32. Section **75-7-816** is amended to read:

1046 **75-7-816. Recitals when title to real property is in trust -- Failure.**

1047 (1) When title to real property is granted to a person as trustee, the terms of the trust  
1048 may be given either:

- 1049 (a) in the deed of transfer; or  
1050 (b) in an instrument signed by the grantor and recorded in the same office as the grant  
1051 to the trustee.
- 1052 (2) If the terms of the trust are not made public as required in Subsection (1), a  
1053 conveyance from the trustee is absolute in favor of purchasers for value who take the property  
1054 without notice of the terms of the trust.
- 1055 (3) The terms of the trust recited in the deed of transfer or the instrument recorded  
1056 under Subsection (1)(b) shall include:
- 1057 (a) the name of the trustee;  
1058 (b) the address of the trustee; and  
1059 (c) the name and date of the trust.
- 1060 (4) Any real property titled in a trust which has a restriction on transfer described in  
1061 Section ~~[25-6-14]~~ [25-6-502](#) shall include in the title the words "asset protection trust."  
1062 Section 33. Section **78B-2-302** is amended to read:
- 1063 **78B-2-302. Within one year.**
- 1064 An action may be brought within one year:
- 1065 (1) for liability created by the statutes of a foreign state;  
1066 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,  
1067 or to an individual and the state, except when the statute imposing it prescribes a different  
1068 limitation;
- 1069 (3) except as provided in Section [78B-2-307.5](#), upon a statute, or upon an undertaking  
1070 in a criminal action, for a forfeiture or penalty to the state;
- 1071 (4) for libel, slander, false imprisonment, or seduction;
- 1072 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned  
1073 upon either civil or criminal process;
- 1074 (6) against a municipal corporation for damages or injuries to property caused by a  
1075 mob or riot;
- 1076 (7) except as otherwise expressly provided by statute, against a county legislative body  
1077 or a county executive to challenge a decision of the county legislative body or county  
1078 executive, respectively; ~~[or]~~
- 1079 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious

1080 Land Use Act[;]; or

1081 (9) for a claim for relief or a cause of action under Subsection [25-6-203](#)(2).

1082 Section 34. Section **78B-2-307** is amended to read:

1083 **78B-2-307. Within four years.**

1084 An action may be brought within four years:

1085 (1) after the last charge is made or the last payment is received:

1086 (a) upon a contract, obligation, or liability not founded upon an instrument in writing;

1087 (b) on an open store account for any goods, wares, or merchandise; or

1088 (c) on an open account for work, labor or services rendered, or materials furnished;

1089 (2) for a claim for relief or a cause of action under the following sections of Title 25,

1090 Chapter 6, Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act:

1091 (a) Subsection [~~25-6-5~~] [25-6-202](#)(1)(a), [~~which~~] except in specific situations [~~limits~~]

1092 where the time for action is limited to one year[;] under Section [~~25-6-10~~] [25-6-305](#);

1093 (b) Subsection [~~25-6-5~~] [25-6-202](#)(1)(b); or

1094 (c) Subsection [~~25-6-6~~] [25-6-203](#)(1); and

1095 (3) for relief not otherwise provided for by law.