

1 **UNIFORM FRAUDULENT TRANSFER ACT AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Brad R. Wilson

7 **LONG TITLE**

8 **General Description:**

9 This bill provides exemptions for good faith transfers to a merchant from a debtor.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that transfers to a merchant who provides goods and services in good faith
13 without knowledge of the debtor's motives or insolvability are not voidable.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **25-6-9**, as last amended by Laws of Utah 2011, Chapter 297

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

23 Section 1. Section **25-6-9** is amended to read:

24 **25-6-9. Good faith transfer.**

25 (1) ~~[A]~~ Except as otherwise provided in this section, a transfer or obligation is not
26 voidable under Subsection **25-6-5**(1)(a) against a person who took in good faith and for a
27 reasonably equivalent value or against any subsequent transferee or obligee.

28 (2) Except as otherwise provided in this section, to the extent a transfer is voidable in
29 an action by a creditor under Subsection **25-6-8**(1)(a), the creditor may recover judgment for

30 the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to
31 satisfy the creditor's claim, whichever is less. The judgment may be entered against:

32 (a) the first transferee of the asset or the person for whose benefit the transfer was
33 made; or

34 (b) any subsequent transferee other than a good faith transferee who took for value or
35 from any subsequent transferee.

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

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

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

43 (b) enforcement of any obligation incurred; or

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

45 (5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the
46 transfer results from:

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

49 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a,
50 Uniform Commercial Code - Secured Transactions.

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

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

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

57 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer

58 secured present value given for that purpose as well as an antecedent debt of the debtor.

59 (7) Notwithstanding the foregoing, a transfer is not voidable under Section 25-6-5 or
60 Subsection 25-6-6(1) if:

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

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

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

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

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

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

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

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

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

79 (b) where the value of the goods, services, or other consideration obtained from the
80 merchant, or where the value of the amounts loaned or advanced by a merchant or a credit or
81 financing company in payment of the goods, services, or other consideration obtained from the
82 merchant, was reasonably equivalent to the value of the transfer, the "reasonably equivalent
83 value" requirement in Subsection (7)(b) will be satisfied regardless of whether the debtor or a
84 third party received the reasonably equivalent value for the transfer; and

85 (c) a transferee's receipt of payment from a debtor is not, and may not be used as,

86 evidence that:

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

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

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

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