

HOUSE BILL No. 6290

June 29, 2006, Introduced by Reps. Miller, Lemmons, Jr., Bennett, Byrnes, Polidori, McDowell, Espinoza, Angerer, Donigan, Bieda, Meisner, Leland, Gleason, Byrum, Condino, Lipsey, Alma Smith, Hunter, Kolb, Kathleen Law, Williams, Anderson, Zelenko, Gillard, Hood, Vagnozzi, Hopgood, Mayes, Sak, Cushingberry and Lemmons, III and referred to the Committee on Employment Relations, Training, and Safety.

A bill to amend 1998 PA 434, entitled
"Uniform fraudulent transfer act,"
by amending section 3 (MCL 566.33).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 (2) For the purposes of sections ~~4(a)(2)~~ 4 and 5, a person
8 gives ~~a~~ reasonably equivalent value if the person acquires an
9 interest of the debtor in an asset pursuant to a regularly

1 conducted, noncollusive foreclosure sale or execution of a power of
2 sale for the acquisition or disposition of the interest of the
3 debtor upon default under a mortgage, deed of trust, or security
4 agreement.

5 (3) A transfer is made for present value if the exchange
6 between the debtor and the transferee is intended by them to be
7 contemporaneous and is in fact substantially contemporaneous.

8 (4) FOR THE PURPOSES OF SECTIONS 4 AND 5(1), NEITHER OF THE
9 FOLLOWING IS REASONABLY EQUIVALENT VALUE WHEN RECEIVED FROM AN
10 OFFICER OR EMPLOYEE IN EXCHANGE FOR A TRANSFER FROM THE DEBTOR:

11 (A) A NONCOMPETE AGREEMENT.

12 (B) AN AGREEMENT TO REMAIN IN THE DEBTOR'S EMPLOY FOR A
13 SPECIFIED PERIOD; EXCEPT THAT A RETENTION AGREEMENT MAY CONSTITUTE
14 REASONABLY EQUIVALENT VALUE FOR A TRANSFER THAT MEETS ALL OF THE
15 FOLLOWING CONDITIONS:

16 (i) THE TRANSFEREE IS A PERSON WHOSE SERVICES ARE ESSENTIAL TO
17 THE SURVIVAL OF THE BUSINESS.

18 (ii) THE TRANSFEREE HAS A BONA FIDE OFFER FROM ANOTHER BUSINESS
19 AT THE SAME OR A GREATER COMPENSATION RATE.

20 (iii) THE AMOUNT OF THE TRANSFER IS NOT MORE THAN 10 TIMES THE
21 MEAN TRANSFER OF A SIMILAR KIND GIVEN TO NONMANAGEMENT EMPLOYEES
22 FOR ANY PURPOSE DURING THE CALENDAR YEAR OF THE TRANSFER. IF NO
23 SIMILAR NONMANAGEMENT TRANSFERS WERE MADE, THE AMOUNT OF THE
24 TRANSFER IS NOT MORE THAN 25% OF THE AMOUNT OF ANY SIMILAR TRANSFER
25 MADE FOR THE RECIPIENT'S BENEFIT FOR ANY PURPOSE DURING THE
26 CALENDAR YEAR BEFORE THE YEAR OF THE TRANSFER.

27 (5) EVIDENCE THAT A PERSON AUTHORIZED A TRANSFER OF THE

1 DEBTOR'S ASSETS AT A TIME WHEN THE DEBTOR WAS INSOLVENT AND FOR
2 WHICH THE DEBTOR RECEIVED A RETENTION AGREEMENT THAT DID NOT
3 CONSTITUTE REASONABLY EQUIVALENT VALUE, AS DESCRIBED IN SUBSECTION
4 (4), MAY BE USED TO ESTABLISH FRAUDULENT INTENT IN A CRIMINAL
5 PROCEEDING.