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House Bill 4618 (as passed by the House)
Sponsor: Representative Jim Haadsma
House Committee: Financial Services
Senate Committee: Judiciary and Public Safety

Date Completed: 6-13-22

CONTENT

The bill would amend the Uniform Voidable Transactions Act to do the following:

- Specify that, with respect to a qualified disposition, a creditor would have the burden of proving the elements of a claim for relief by clear and convincing evidence.**
- Prescribe rules for determining a qualified trustee's location.**

Transfer with Intent to Defraud

Under the Act, except as otherwise provided, a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation under certain prescribed circumstances. A creditor that makes a claim for relief has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

A qualified disposition is fraudulent as to the creditor whose claim arose after the qualified disposition only if the qualified disposition was made with actual intent to hinder, delay, or defraud any creditor of the debtor. ("Qualified disposition" means a disposition after which both of the following apply to the subject property:

- The property is owned by one or more trustees, at least one of whom is a qualified trustee.
- The property is governed by a trust instrument under which the transferor has only rights, powers, and interests that are permitted under the Act.

A disposition is not a qualified disposition to the extent that, at the time of the disposition, the transferor is in arrears on a child support obligation by more than 30 days. A disposition also is not a qualified disposition if a transferor or any person related or subordinate to the transferor within the meaning of Section 672(c) of the Internal Revenue Code may act as an advisor.)

Under the bill, with respect to a qualified disposition, a creditor would have the burden of proving the elements of a claim for relief by clear and convincing evidence.

"Disposition" would mean that term as defined in the Qualified Dispositions in Trust Act: a transfer of property that either creates a new fiduciary relation between at least one trustee

and a trust beneficiary or newly subjects property to a preexisting fiduciary relation between at least one trustee and a trust beneficiary.

Transfer by Debtor as Voidable

Under the Act, a transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

A creditor making a claim for relief as described above has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Under the bill, with respect to a qualified disposition, a creditor would have the burden of proving the elements of the claim for relief by clear and convincing evidence.

Jurisdiction

The Act specifies that the following rules determine a debtor's location:

- A debtor who is an individual is located at the individual's principal residence.
- A debtor that is an organization and has only one place of business is located at its place of business.
- A debtor that is an organization and has more than one place of business is located at its chief executive office.

A claim for relief in the nature of a claim for relief under the Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Under the bill, the following rules would determine a qualified trustee's location:

- A qualified trustee who is an individual is located at the individual's principal residence.
- A qualified trustee whose activities were subject to supervision by the Department of Insurance and Financial Services (DIFS), the Federal Deposit Insurance Corporation (FDIC), the Comptroller of the Currency, or the Office of Thrift Supervision would be located at the business location of the primary trust officer.

"Qualified trustee" would mean that term as defined the Qualified Dispositions in Trust Act: a person, other than the transferor, who meets all of the following conditions:

- For an individual, the individual is a Michigan resident, in all other cases, is authorized by Michigan law to act as a trustee and whose activities are subject to supervision by the DIFS, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision.
- The person maintains or arranges for custody in Michigan of some or all of the property that is the subject of the qualified disposition and administers all or part of the trust in Michigan.
- The person's usual place of business where some of the records pertaining to the trust are kept is located in Michigan or, if the person does not have such a place of business, the

-- person's residence is in Michigan; for a corporate trustee, the usual place of business is the business location of the primary trust officer.

With respect to a qualified disposition, a claim for relief under the Act or a claim that a disposition was not a qualified disposition would be governed by the local law of the jurisdiction in which the qualified trustee serving at the time the disposition was made was located.

MCL 566.31 et al.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.