

513.44 TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT OR FUTURE CREDITOR.

(a) 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:

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

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

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

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under paragraph (a), clause (1), consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

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

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

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

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

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

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

(11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim under paragraph (a) has the burden of proving the elements of the claim by a preponderance of the evidence.

History: 1986 c 444; 1987 c 19 s 4; 2015 c 17 s 4

NOTE: This section was found preempted by the federal Employee Retirement Income Security Act (ERISA) as applied to withdrawal liability from multiemployer ERISA plans in *Central States, Southeast and Southwest Areas Pension Fund v. Marquette Bank, Minneapolis, N.A.*, 836 F.Supp. 673 (D. Minn. 1993).

NOTE: This section was found preempted by the federal Railway Labor Act as applied to claims requiring interpretation of railroad collective bargaining agreements and by the federal Interstate Commerce Act in *Deford v. Soo Line Railroad Co.*, 867 F.2d 1080 (8th Cir. 1989).