

D R A F T

SUMMARY

Redesignates Uniform Fraudulent Transfer Act as Uniform Voidable Transactions Act. Conforms provisions relating to covered transactions, burdens of proof and choice of law.

A BILL FOR AN ACT

1
2 Relating to voidable transactions; creating new provisions; and amending
3 ORS 18.358, 95.200, 95.210, 95.220, 95.230, 95.240, 95.250, 95.270, 95.280 and
4 95.310.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Sections 2 to 4 of this 2023 Act are added to and made**
7 **a part of ORS 95.200 to 95.310.**

8 **SECTION 2. (1) A claim for relief in the nature of a claim for relief**
9 **under ORS 95.200 to 95.310 is governed by the local law of the juris-**
10 **isdiction in which the debtor is located at the time the transfer is made**
11 **or the obligation is incurred.**

12 **(2) For purposes of this section, a debtor's location is determined**
13 **as follows:**

14 **(a) A debtor who is an individual is located at the individual's**
15 **principal residence.**

16 **(b) A debtor that is an organization and has only one place of**
17 **business is located at its place of business.**

18 **(c) A debtor that is an organization and has more than one place**
19 **of business is located at its chief executive office.**

20 **SECTION 3. (1) For the purposes of ORS 95.200 to 95.310, a series**

1 organization and each protected series of the organization is a separate person, even if for other purposes a protected series is not a person separate from the series organization or other protected series of the organization.

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5 (2) As used in this section:

6 (a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (b) of this subsection.

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

11 (A) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

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16 (B) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

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21 (C) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

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26 SECTION 4. ORS 95.200 to 95.310 modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

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31 SECTION 5. ORS 95.200 is amended to read:

1 95.200. As used in ORS 95.200 to 95.310:

2 (1) “Affiliate” means [*any of the following*]:

3 (a) A person [*who*] **that** directly or indirectly owns, controls or holds with
4 power to vote 20 or more percent of the outstanding voting securities of the
5 debtor, other than a person [*who*] **that** holds the securities:

6 (A) As a fiduciary or agent without sole discretionary power to vote the
7 securities; or

8 (B) Solely to secure a debt, if the person has not in fact exercised the
9 power to vote.

10 (b) [*A corporation*] **An organization**, 20 or more percent of whose out-
11 standing voting securities **or other voting interests** are directly or indi-
12 rectly owned, controlled or held with power to vote by the debtor or by a
13 person [*who*] **that** directly or indirectly owns, controls or holds with power
14 to vote 20 or more percent of the outstanding voting securities **or other**
15 **voting interests** of the debtor, other than a person [*who*] **that** holds the
16 securities:

17 (A) As a fiduciary or agent without sole discretionary power to vote the
18 securities **or other voting interests**; or

19 (B) Solely to secure a debt, if the person has not in fact exercised the
20 power to vote.

21 (c) A person whose business is operated by the debtor under a lease or
22 other agreement, or a person substantially all of whose assets are controlled
23 by the debtor.

24 (d) A person [*who*] **that** operates the debtor’s business under a lease or
25 other agreement or controls substantially all of the debtor’s assets.

26 (2) “Asset” means property of a debtor but does not include:

27 (a) Property to the extent [*that it is*] encumbered by a valid lien;

28 (b) Property to the extent that it is generally exempt under nonbank-
29 ruptcy law; or

30 (c) An interest in property held in tenancy by the [*entirety to the extent*
31 *that it is*] **entireties to the extent** not subject to process by a creditor

1 holding a claim against only one tenant.

2 (3)(a) “Claim” means a right to payment, whether or not the right is re-
3 duced to judgment, liquidated, unliquidated, fixed, contingent, matured, un-
4 matured, disputed, undisputed, legal, equitable, secured or unsecured.

5 (b) **“Claim for relief” does not have the same meaning as the term**
6 **“claim.”**

7 (4) “Creditor” means a person [*who*] **that** has a claim [*against a debtor*].

8 (5) “Debt” means liability on a claim.

9 (6) “Debtor” means a person [*against whom a creditor has*] **that is liable**
10 **on** a claim.

11 (7) **“Electronic” means relating to technology having electrical,**
12 **digital, magnetic, wireless, optical, electromagnetic or similar capaci-**
13 **ties.**

14 [(7)] (8) [*An*] “Insider” includes:

15 (a) If the debtor is an individual:

16 (A) A relative of the debtor or of a general partner of the debtor;

17 (B) A partnership in which the debtor is a general partner;

18 (C) A general partner in a partnership described in subparagraph (B) of
19 this paragraph; or

20 (D) A corporation of which the debtor is a director, officer, **manager** or
21 person in control.

22 (b) If the debtor is a corporation:

23 (A) A director of the debtor;

24 (B) An officer of the debtor;

25 (C) A person in control of the debtor;

26 (D) A partnership in which the debtor is a general partner;

27 (E) A general partner in a partnership described in subparagraph (D) of
28 this paragraph; or

29 (F) A relative of a general partner, director, officer or person in control
30 of the debtor.

31 (c) If the debtor is a partnership:

1 (A) A general partner in the debtor;

2 (B) A relative of a general partner in, **a general partner of, or** [*a debtor,*
3 *of a general partner of a debtor, or of*] a person in control of the debtor;

4 (C) Another partnership in which the debtor is a general partner;

5 (D) A general partner in a partnership described in subparagraph (C) of
6 this paragraph; or

7 (E) A person in control of the debtor.

8 **(d) If the debtor is a limited liability company or other business**
9 **organization:**

10 **(A) A member of the debtor; or**

11 **(B) A manager, or other person in control, of the debtor.**

12 [(d)] **(e)** An affiliate or an insider of an affiliate as if the affiliate were
13 the debtor.[: *and*]

14 [(e)] **(f)** A managing agent of the debtor.

15 [(8)] **(9)** “Lien” means a charge against or an interest in property to se-
16 cure payment of a debt or performance of an obligation, including a security
17 interest created by agreement, a judicial lien obtained by legal or equitable
18 process or proceedings, a common-law lien or a statutory lien.

19 **(10) “Organization” means a person other than an individual.**

20 [(9)] **(11)** “Person” means an individual, partnership, corporation, associ-
21 ation, organization, government or governmental subdivision or agency,
22 business trust or any other legal or commercial entity.

23 [(10)] **(12)** “Property” means anything that may be the subject of owner-
24 ship.

25 **(13) “Record” means information that is inscribed on a tangible**
26 **medium or that is stored in an electronic or other medium and is re-**
27 **trievable in any perceivable form.**

28 [(11)] **(14)** “Relative” means an individual related **by consanguinity**
29 within the third degree as determined by the common law, a spouse, or an
30 individual related to a spouse within the third degree as so determined, and
31 includes an individual in an adoptive relationship within the third degree.

1 **(15) “Sign” means, with present intent to authenticate or adopt a**
2 **record:**

3 **(a) To execute or adopt a tangible symbol; or**

4 **(b) To attach to or logically associate with the record an electronic**
5 **symbol, sound or process.**

6 [(12)] **(16) “Transfer”** means every mode, direct or indirect, absolute or
7 conditional, voluntary or involuntary, of disposing of or parting with an as-
8 set or an interest in an asset, and includes a payment of money, a release,
9 a lease and the creation of a lien or **other** encumbrance.

10 [(13)] **(17) “Valid lien”** means a lien that is effective against the holder
11 of a judicial lien subsequently obtained by legal or equitable process or
12 proceedings.

13 **SECTION 6.** ORS 95.210 is amended to read:

14 95.210. (1) A debtor is insolvent if, at a fair valuation, the sum of the
15 debtor’s debts is greater than [all] **the sum** of the debtor’s assets.

16 **(2) A debtor that is generally not paying the debtor’s debts as they**
17 **become due, other than as a result of a bona fide dispute, is rebuttably**
18 **presumed to be insolvent.**

19 [(2) *A debtor who is generally not paying debts of the debtor as they become*
20 *due is presumed to be insolvent.*]

21 [(3) *A partnership is insolvent under subsection (1) of this section if, at a*
22 *fair valuation, the sum of the partnership’s debts is greater than the aggregate*
23 *of all of the partnership’s assets and the sum of the excess of the value of each*
24 *general partner’s nonpartnership assets over the partner’s nonpartnership*
25 *debts.*]

26 [(4)] **(3)** Assets under this section do not include property that has been
27 transferred, concealed or removed with intent to hinder, delay, or defraud
28 creditors or that has been transferred in a manner making the transfer
29 voidable under ORS 95.200 to 95.310.

30 [(5)] **(4)** Debts under this section do not include an obligation to the ex-
31 tent the obligation is secured by a valid lien on property of the debtor not

1 included as an asset.

2 **SECTION 7.** ORS 95.220 is amended to read:

3 95.220. (1) Value is given for a transfer or an obligation if in exchange
4 for the transfer or obligation property is transferred or an antecedent debt
5 is secured or satisfied, but value does not include an unperformed promise
6 made otherwise than in the ordinary course of the promisor's business to
7 furnish support to the debtor or another person.

8 (2) For the purposes of ORS 95.230 (1)(b) and 95.240, a person gives a
9 reasonably equivalent value if the person acquires an interest [*in*] **of** the
10 debtor in an asset pursuant to a regularly conducted, noncollusive foreclo-
11 sure sale or execution of a power of sale for the acquisition or disposition
12 of the interest of the debtor upon default under a mortgage, deed of trust
13 or security agreement.

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

17 **SECTION 8.** ORS 95.230 is amended to read:

18 95.230. (1) A transfer made or obligation incurred by a debtor is [*fraudu-*
19 *lent*] **voidable** as to a creditor, whether the creditor's claim arose before or
20 after the transfer was made or the obligation was incurred, if the debtor
21 made the transfer or incurred the obligation:

22 (a) With actual intent to hinder, delay[,] or defraud any creditor of the
23 debtor; or

24 (b) Without receiving a reasonably equivalent value in exchange for the
25 transfer or obligation, and the debtor:

26 (A) Was engaged or was about to engage in a business or a transaction
27 for which the remaining assets of the debtor were unreasonably small in re-
28 lation to the business or transaction; or

29 (B) Intended to incur, or believed or reasonably should have believed that
30 the debtor would incur, debts beyond the debtor's ability to pay as they be-
31 come due.

1 (2) In determining actual intent under subsection (1)(a) of this section,
2 consideration may be given, among other factors, to whether:

3 (a) The transfer or obligation was to an insider;

4 (b) The debtor had retained possession or control of the property trans-
5 ferred after the transfer;

6 (c) The transfer or obligation was disclosed or concealed;

7 (d) Before the transfer was made or obligation was incurred, the debtor
8 was sued or threatened with suit;

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

10 (f) The debtor had absconded;

11 (g) The debtor had removed or concealed assets;

12 (h) The value of the consideration received by the debtor was reasonably
13 equivalent to the value of the asset transferred or the amount of the obli-
14 gation incurred;

15 (i) The debtor was insolvent or became insolvent shortly after the transfer
16 was made or the obligation was incurred;

17 (j) The transfer had occurred shortly before or shortly after a substantial
18 debt was incurred; and

19 (k) The debtor had transferred the essential assets of the business to a
20 lienor who had transferred the assets to an insider of the debtor.

21 **(3) A creditor making a claim for relief under this section has the**
22 **burden of proving the elements of the claim for relief by preponder-**
23 **ance of the evidence.**

24 **SECTION 9.** ORS 95.240 is amended to read:

25 95.240. (1) A transfer made or obligation incurred by a debtor is [*fraudu-*
26 *lent*] **voidable** as to a creditor whose claim arose before the transfer was
27 made or the obligation was incurred if the debtor made the transfer or in-
28 curred the obligation without receiving a reasonably equivalent value in
29 exchange for the transfer or obligation and the debtor was insolvent at that
30 time or the debtor [*becomes*] **became** insolvent as a result of the transfer or
31 obligation.

1 (2) A transfer made by a debtor is [*fraudulent*] **voidable** as to a creditor
2 whose claim arose before the transfer was made if the transfer was made to
3 an insider for [*other than a present, reasonably equivalent value*] **an**
4 **antecedent debt**, the debtor was insolvent at that time and the insider had
5 reasonable cause to believe that the debtor was insolvent.

6 **(3) Subject to ORS 95.210, a creditor making a claim for relief under**
7 **this section has the burden of proving the elements of the claim for**
8 **relief by a preponderance of the evidence.**

9 **SECTION 10.** ORS 95.250 is amended to read:

10 95.250. For the purposes of ORS 95.200 to 95.310:

11 (1) A transfer is made:

12 (a) With respect to an asset that is real property other than a fixture, but
13 including the interest of a seller or purchaser under a contract for the sale
14 of the asset, when the transfer is so far perfected that a good-faith purchaser
15 of the asset from the debtor against [*whom*] **which** applicable law permits
16 the transfer to be perfected cannot acquire an interest in the asset that is
17 superior to the interest of the transferee; and

18 (b) With respect to an asset that is not real property or that is a fixture,
19 when the transfer is so far perfected that a creditor on a simple contract
20 cannot acquire a judicial lien otherwise than under ORS 95.200 to 95.310 that
21 is superior to the interest of the transferee.

22 (2) If applicable law permits the transfer to be perfected as provided in
23 subsection (1) of this section and the transfer is not so perfected before the
24 commencement of an action for relief under ORS 95.200 to 95.310, the transfer
25 is **deemed** made immediately before the commencement of the action.

26 (3) If applicable law does not permit the transfer to be perfected as pro-
27 vided in subsection (1) of this section, the transfer is made when it becomes
28 effective between the debtor and the transferee.

29 (4) A transfer is not made until the debtor has acquired rights in the asset
30 transferred.

31 (5) An obligation is incurred:

1 (a) If oral, when it becomes effective between the parties.

2 (b) If evidenced by a [*writing, when the writing executed*] **record, when**
3 **the record signed** by the obligor is delivered to or for the benefit of the
4 obligee.

5 **SECTION 11.** ORS 95.270 is amended to read:

6 95.270. (1) A transfer or obligation is not voidable under ORS 95.230 (1)(a)
7 as against a person [*who*] **that** took in good faith and for a reasonably
8 equivalent value [*or*] **given the debtor or as against** any subsequent
9 transferee or obligee.

10 (2) [*Except as otherwise provided in this section,*] To the extent a transfer
11 is [*voidable*] **avoidable** in an action by a creditor under ORS 95.260 (1)(a),
12 the **following apply**:

13 (a) **Except as otherwise provided in this section, the** creditor may
14 recover judgment for the value of the asset transferred, as adjusted under
15 subsection (3) of this section, or the amount necessary to satisfy the
16 creditor's claim, whichever is less. The judgment may be entered against:

17 [(a)] (A) The first transferee of the asset or the person for whose benefit
18 the transfer was made; or

19 (B) **An immediate or mediate transferee of the first transferee,**
20 **other than:**

21 (i) **A good-faith transferee that took for value; or**

22 (ii) **An immediate or mediate good-faith transferee of a person de-**
23 **scribed in sub-subparagraph (i) of this subparagraph.**

24 (b) **Recovery under ORS 95.260 (1)(a) or (2) of, or from, the asset**
25 **transferred or its proceeds, by levy or otherwise, is available only**
26 **against a person described in paragraph (a) of this subsection.**

27 [(b) *Any subsequent transferee.*]

28 (3) If the judgment under subsection (2) of this section is based upon the
29 value of the asset transferred, the judgment must be for an amount equal to
30 the value of the asset at the time of the transfer, subject to adjustment as
31 the equities may require.

1 *[(4) A creditor may not recover under subsection (2)(b) of this section from*
2 *a good-faith transferee or obligee who took for value or from any subsequent*
3 *transferee or obligee.]*

4 *[(5)] (4) Notwithstanding voidability of a transfer or an obligation under*
5 *ORS 95.200 to 95.310, a good-faith transferee or obligee is entitled, to the*
6 *extent of the value given the debtor for the transfer or obligation, to:*

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

8 (b) Enforcement of any obligation incurred; or

9 (c) A reduction in the amount of the liability on the judgment.

10 *[(6) A transfer is not voidable under ORS 95.240 (2):]*

11 *[(a) To the extent the insider gave new value to or for the benefit of the*
12 *debtor after the transfer was made unless the new value was secured by an*
13 *otherwise unavoidable lien;]*

14 *[(b) If made in the ordinary course of business or financial affairs of the*
15 *debtor and the insider; or]*

16 *[(c) If made pursuant to a good-faith effort to rehabilitate the debtor and*
17 *the transfer secured present value given for that purpose as well as an*
18 *antecedent debt of the debtor.]*

19 *[(7)] (5) A transfer is not voidable under ORS 95.230 (1)(b) or 95.240 if the*
20 *transfer results from:*

21 (a) Termination of a lease upon default by the debtor when the termi-
22 nation is pursuant to the terms of the lease and applicable law; or

23 (b) Enforcement of a security interest in compliance with ORS chapter
24 79.

25 **(6) A transfer is not voidable under ORS 95.240 (2):**

26 **(a) To the extent the insider gave new value to or for the benefit**
27 **of the debtor after the transfer was made unless the new value was**
28 **secured by an otherwise unavoidable lien;**

29 **(b) If made in the ordinary course of business or financial affairs**
30 **of the debtor and the insider; or**

31 **(c) If made pursuant to a good-faith effort to rehabilitate the debtor**

1 and the transfer secured present value given for that purpose as well
2 as an antecedent debt of the debtor.

3 (7) The burden of proving matters referred to in this section is de-
4 termined as follows:

5 (a) A party that seeks to invoke subsection (1), (4), (5) or (6) of this
6 section has the burden of proving the applicability of the subsection.

7 (b) Except as otherwise provided in paragraphs (c) and (d) of this
8 subsection, the creditor has the burden of proving each applicable
9 element of subsection (2) or (3) of this section.

10 (c) The transferee has the burden of proving the applicability to the
11 transferee of subsection (2)(a)(B)(i) or (ii) of this section.

12 (d) A party that seeks adjustment under subsection (3) of this sec-
13 tion has the burden of proving the adjustment.

14 (8) The standard of proof required to establish matters referred to
15 in this section is preponderance of the evidence.

16 **SECTION 12.** ORS 95.280 is amended to read:

17 95.280. A claim for relief with respect to a [*fraudulent*] transfer or obli-
18 gation under ORS 95.200 to 95.310 is extinguished unless action is brought:

19 (1) Under ORS 95.230 (1)(a) within four years after the transfer was made
20 or the obligation was incurred or, if later, within one year after the transfer
21 or obligation was or could reasonably have been discovered by the claimant;

22 (2) Under ORS 95.230 (1)(b) or 95.240 (1), within four years after the
23 transfer was made or the obligation was incurred; or

24 (3) Under ORS 95.240 (2), within one year after the transfer was made or
25 the obligation was incurred.

26 **SECTION 13.** ORS 95.310 is amended to read:

27 95.310. ORS 95.200 to 95.310 may be cited as the Uniform [*Fraudulent*
28 *Transfer*] **Voidable Transactions Act.**

29 **SECTION 14.** (1) Sections 2 to 4 of this 2023 Act and the amend-
30 ments to ORS 95.200, 95.210, 95.220, 95.230, 95.240, 95.250, 95.270, 95.280
31 and 95.310 by sections 5 to 13 of this 2023 Act:

1 (a) Apply to a transfer made or obligation incurred on or after the
2 effective date of this 2023 Act;

3 (b) Do not apply to a transfer made or obligation incurred before
4 the effective date of this 2023 Act; and

5 (c) Do not apply to a right of action that has accrued before the
6 effective date of this 2023 Act.

7 (2) For the purposes of this section, a transfer is made and an ob-
8 ligation is incurred at the time described in ORS 95.250, as amended
9 by section 10 of this 2023 Act.

10 **SECTION 15.** ORS 18.358 is amended to read:

11 18.358. (1) As used in this section:

12 (a) “Beneficiary” means a person for whom retirement plan benefits are
13 provided or their spouse.

14 (b) “Internal Revenue Code” means the federal Internal Revenue Code as
15 amended and in effect on December 31, 1998.

16 (c) “Permitted contribution” means:

17 (A) A contribution that, at the time of the contribution, is not taxable
18 income to the beneficiary and, if the sponsor is a taxable entity, is tax
19 deductible to the sponsor;

20 (B) A nondeductible contribution by a beneficiary to a retirement plan to
21 the extent that the contribution is permitted to be made under the Internal
22 Revenue Code;

23 (C) A deductible or nondeductible contribution to an individual retire-
24 ment account to the extent the contribution is not subject to federal excise
25 tax as an excess contribution;

26 (D) A contribution, pursuant to a rollover or transfer, from one retire-
27 ment plan to another, to the extent the federal tax deferred status is pre-
28 served at such time;

29 (E) A rollover from an individual retirement account described in section
30 408 of the Internal Revenue Code to an individual retirement account de-
31 scribed in section 408A of the Internal Revenue Code; and

1 (F) Any earnings under a retirement plan that are attributable to a con-
2 tribution described in subparagraphs (A) to (E) of this paragraph.

3 (d) "Retirement plan" means:

4 (A) A pension plan and trust, including a profit sharing plan, that is de-
5 scribed in sections 401(a), 401(c), 401(k), 403 and 457 of the Internal Revenue
6 Code, including that portion attributable to contributions made by or at-
7 tributable to a beneficiary;

8 (B) An individual retirement account or annuity, including one that is
9 pursuant to a simplified employee pension, as described in section 408 or
10 408A of the Internal Revenue Code; and

11 (C) Any pension not described in subparagraphs (A) and (B) of this para-
12 graph granted to any person in recognition or by reason of a period of em-
13 ployment by or service for the Government of the United States or any state
14 or political subdivision of any state, or any municipality, person, partner-
15 ship, association or corporation.

16 (e) "Sponsor" means an individual or entity that establishes a retirement
17 plan.

18 (2) Subject to the limitations set forth in subsection (3) of this section,
19 a retirement plan shall be conclusively presumed to be a valid spendthrift
20 trust under these statutes and the common law of this state, whether or not
21 the retirement plan is self-settled, and a beneficiary's interest in a retirement
22 plan shall be exempt, effective without necessity of claim thereof, from exe-
23 cution and all other process, mesne or final.

24 (3) Notwithstanding subsection (2) of this section:

25 (a) A contribution to a retirement plan, other than a permitted contribu-
26 tion, shall be subject to ORS 95.200 to 95.310 concerning [*fraudulent*
27 *transfers*] **voidable transactions**; and

28 (b) Unless otherwise ordered by a court under ORS 25.387, 75 percent of
29 a beneficiary's interest in a retirement plan, or 50 percent of a lump sum
30 retirement plan disbursement or withdrawal, shall be exempt from execution
31 or other process arising out of a support obligation or an order or notice

1 entered or issued under ORS 25.501 to 25.556 or ORS chapter 25, 107, 108, 109,
2 110, 419B or 419C.

3 _____