HB 2330 STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary

Action Date:	04/19/23
Action:	Do pass.
Vote:	3-1-1-0
Yeas:	3 - Manning Jr, Prozanski, Thatcher
Nays:	1 - Linthicum
Exc:	1 - Gelser Blouin
Fiscal:	No fiscal impact
Revenue:	No revenue impact
Prepared By:	Adrienne Anderson, LPRO Analyst
Meeting Dates:	3/6, 4/19

WHAT THE MEASURE DOES:

Clarifies that nonfraudulent transfers can still be covered and replaces the word “fraudulent” with “voidable.” Specifies that creditors bear the burden of proof by a preponderance of the evidence, except as to defenses. Implements a choice-of-law rule that establishes that a claim for relief is governed by the local law of the jurisdiction in which the debtor is located at the time the transfer is made or obligation is incurred. Establishes the criteria to determine a debtor’s location. Modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, but does not affect the consumer disclosures portion of the Act. Establishes that a transfer is not voidable if: the insider gave new value to or for the benefit of the debtor after the transfer was made, unless it was secured by an unavoidable lean; the transfer was made in the ordinary course of business of the debtor; or the transfer was made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose, as well as an earlier debt of the debtor. Certifies that the Uniform Voidable Transfer Act (UVTA) applies only to transfers made after the effective date of the Act.

ISSUES DISCUSSED:

- Court should apply the same substantive law, no matter where the court is located
- The Act covers unfair terms, in addition to fraud
- Modifies, limits, and supersedes the Electronic Signature in Global and National Commerce Act

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon enacted the Uniform Fraudulent Transfer Act (UFTA) in 1985. However, the Act’s use of the words “fraudulent” and “fraud” for covered transactions indicate that the transactions must involve blameworthy intent. The Act does not specify which party, transferee or creditor, bears the burden of proof, and there is uncertainty as to which state's or nation’s comparable statute would apply in a cross-border situation.

The Uniform Law Commision is a is a nonpartisan, nonprofit created in 1892. It is comprised of state commissioners from each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands to draft uniform laws for each state. Most jurisdictions provide for their commission by statute. ORS 172.010 provides for Oregon’s commission. The ULC promulgated the language for the UVTA, which amends the UFTA. Twenty-two states, including Washington state, California, and Idaho have adopted the model language since the ULC drafted the amendment in 2014. House Bill 2330 models language from the ULC that amends the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act.

House Bill 2330 seeks to clarify that nonfraudulent transfers are included in the act and are therefore voidable, specifies that creditors bear the burden of proof, except as to defenses, and implements a choice-of-law rule.