

1 HB113
2 173056-2
3 By Representative Fridy
4 RFD: Judiciary
5 First Read: 03-FEB-16

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8 SYNOPSIS: Under existing law, the Alabama Fraudulent
9 Transfer Act prohibits the fraudulent transfer of
10 assets.

11 This bill would provide that a transfer
12 includes those transfers made pursuant to a divorce
13 settlement or domestic settlement for purposes of
14 the Alabama Fraudulent Transfer Act.

15 This bill would provide that the act is
16 declaratory of existing law and does not change
17 existing law.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 Relating to the Alabama Fraudulent Transfer Act; to
24 amend Section 8-9A-1 of the Code of the Alabama 1975; to
25 provide that a transfer includes those transfers made pursuant
26 to a divorce settlement or domestic settlement for purposes of
27 the Alabama Fraudulent Transfer Act; and to clarify that this

1 act is declaratory in nature and not intended to change
2 existing law.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 8-9A-1 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§8-9A-1.

7 As used in this chapter, the following words have
8 the following meanings:

9 "(1) AFFILIATE.

10 "a. A person who directly or indirectly owns,
11 controls, or holds with power to vote, 20 percent or more of
12 the outstanding voting securities of the debtor, other than a
13 person who holds the securities,

14 "1. As a fiduciary or agent without sole
15 discretionary power to vote the securities; or

16 "2. Solely to secure a debt, if the person has not
17 exercised the power to vote;

18 "b. A corporation 20 percent or more of whose
19 outstanding voting securities are directly or indirectly
20 owned, controlled, or held with power to vote, by the debtor
21 or a person who directly or indirectly owns, controls, or
22 holds, with power to vote, 20 percent or more of the
23 outstanding voting securities of the debtor, other than a
24 person who holds the securities,

25 "1. As a fiduciary or agent without sole power to
26 vote the securities; or

1 "2. Solely to secure a debt, if the person has not
2 in fact exercised the power to vote;

3 "c. A person whose business is operated by the
4 debtor under a lease or other agreement or a person
5 substantially all of whose assets are controlled by the
6 debtor, or

7 "d. A person who operates the debtor's business
8 under a lease or other agreement or controls substantially all
9 of the debtor's assets.

10 "(2) ASSET. Property of a debtor, but the term does
11 not include:

12 "a. Property to the extent it is encumbered by a
13 valid lien;

14 "b. Property to the extent it is generally exempt
15 under nonbankruptcy law; or

16 "c. An interest in property held in tenancy in
17 common for life with cross contingent remainder to the
18 survivor in fee to the extent it is not subject to process by
19 a creditor holding a claim against only one tenant.

20 "(3) CLAIM. A right to payment, whether or not the
21 right is reduced to judgment, liquidated, unliquidated, fixed,
22 contingent, matured, unmatured, disputed, undisputed, legal,
23 equitable, secured, or unsecured, and specifically shall
24 include the nonpayment of child support pursuant to a court
25 order.

26 "(4) CREDITOR. A person who has a claim.

27 "(5) DEBT. Liability on a claim.

1 "(6) DEBTOR. A person who is liable on a claim.

2 "(7) INCLUDES. Is not a limiting term.

3 "(8) INSIDER. Includes:

4 "a. If the debtor is an individual,

5 "1. A relative of the debtor or of a general partner

6 of the debtor;

7 "2. A partnership in which the debtor is a general

8 partner;

9 "3. A general partner in a partnership described in

10 subparagraph 2; or

11 "4. A corporation of which the debtor is a director,

12 officer, or person in control;

13 "b. If the debtor is a corporation,

14 "1. A director of the debtor;

15 "2. An officer of the debtor;

16 "3. A person in control of the debtor;

17 "4. A partnership in which the debtor is a general

18 partner;

19 "5. A general partner in a partnership described in

20 subparagraph 4; or

21 "6. A relative of a general partner, director,

22 officer, or person in control of the debtor,

23 "c. If the debtor is a partnership,

24 "1. A general partner in the debtor;

25 "2. A relative of a general partner in, a general

26 partner of, or a person in control of the debtor;

1 "3. Another partnership in which the debtor is a
2 general partner;

3 "4. A general partner in a partnership described in
4 subparagraph 3; or

5 "5. A person in control of the debtor.

6 "d. An affiliate, or an insider of an affiliate as
7 if the affiliate were the debtor; and

8 "e. A managing agent of the debtor.

9 "(9) LIEN. A charge against or an interest in
10 property to secure payment of a debt or performance of an
11 obligation, and includes a security interest created by
12 agreement, a judicial lien obtained by legal or equitable
13 process or proceedings, a common law lien, or a statutory
14 lien.

15 "(10) PERSON. An individual, partnership,
16 corporation, association, organization, government, or
17 governmental subdivision or agency, business trust, estate,
18 trust, or any other legal or commercial entity.

19 "(11) PROPERTY. Both real and personal property,
20 whether tangible or intangible, and any interest in property
21 whether legal or equitable and includes anything that may be
22 the subject of ownership.

23 "(12) RELATIVE. An individual related by
24 consanguinity within the third degree as determined by the
25 common law, a spouse, or an individual related to a spouse
26 within the third degree as so determined, and includes an

1 individual in an adoptive relationship within the third
2 degree.

3 "(13) TRANSFER. Every mode, direct or indirect,
4 absolute or conditional, voluntary or involuntary, of
5 disposing of or parting with an asset or an interest in an
6 asset, and includes payment of money, release, lease, and
7 creation of a lien or other encumbrance. The term includes a
8 transfer made pursuant to a divorce settlement or domestic
9 settlement, whether or not the divorce settlement or domestic
10 settlement, or the terms thereof, is approved by a court or
11 incorporated into the terms of an order, judgment, or decree.

12 "(14) VALID LIEN. A lien that is effective against
13 the holder of a judicial lien subsequently obtained by legal
14 or equitable process or proceedings."

15 Section 2. The amendment to Section 8-9A-1, Code of
16 Alabama 1975, made by Section 1 of this act providing that a
17 transfer made pursuant to a divorce settlement or domestic
18 settlement falls within the definition of transfer for
19 purposes of the Uniform Fraudulent Transfer Act, is
20 declaratory of, and does not constitute a change in, existing
21 law. To the extent necessary to carry out the intent of the
22 Legislature, this act shall be applied retroactively.

23 Section 3. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.