

SENATE BILL NO. 7
INTRODUCED BY MAZUREK

IN THE SENATE

DECEMBER 28, 1990 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

JANUARY 7, 1991 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 26, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

MARCH 14, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

MARCH 16, 1991 SECOND READING, CONCURRED IN.

MARCH 18, 1991 THIRD READING, CONCURRED IN.
 AYES, 96; NOES, 0.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS
 CONCURRED IN.

MARCH 25, 1991 THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

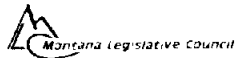
1 SENATE BILL NO. 7
 2 INTRODUCED BY MAZUREK
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE UNIFORM
 5 FRAUDULENT CONVEYANCES ACT WITH THE UNIFORM FRAUDULENT
 6 TRANSFER ACT; EXTENDING FRAUDULENT CONVEYANCE LAWS TO
 7 PERSONAL PROPERTY TRANSFERS; DEFINING TRANSFERS CONSIDERED
 8 FRAUDULENT; PROVIDING REMEDIES AND DEFENSES; PROVIDING FOR
 9 LIMITATIONS OF CAUSES OF ACTION; AMENDING SECTION 53-5-401,
 10 MCA; AND REPEALING SECTIONS 31-2-301, 31-2-302, 31-2-303,
 11 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316,
 12 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, AND
 13 31-2-325, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. Section 1. Short title. [Sections 1
 17 through 11] may be cited as the "Uniform Fraudulent Transfer
 18 Act".

19 NEW SECTION. Section 2. Definitions. As used in
 20 [sections 1 through 11], the following definitions apply:

- 21 (1) "Affiliate" means:
 22 (a) a person who directly or indirectly owns, controls,
 23 or holds with power to vote 20% or more of the outstanding
 24 voting securities of the debtor, other than a person who
 25 holds the securities:

- 1 (i) as a fiduciary or agent without sole discretionary
 2 power to vote the securities; or
 3 (ii) solely to secure a debt if the person has not
 4 exercised the power to vote;
 5 (b) a corporation 20% or more of whose outstanding
 6 voting securities are directly or indirectly owned,
 7 controlled, or held with power to vote by the debtor or a
 8 person who directly or indirectly owns, controls, or holds
 9 with power to vote 20% or more of the outstanding voting
 10 securities of the debtor, other than a person who holds the
 11 securities:
 12 (i) as a fiduciary or agent without sole power to vote
 13 the securities; or
 14 (ii) solely to secure a debt if the person has not
 15 exercised the power to vote;
 16 (c) a person whose business is operated by the debtor
 17 under a lease or other agreement or a person substantially
 18 all of whose assets are controlled by the debtor; or
 19 (d) a person who operates the debtor's business under a
 20 lease or other agreement or controls substantially all of
 21 the debtor's assets.
 22 (2) "Asset" means property of a debtor, but the term
 23 does not include:
 24 (a) property to the extent it is encumbered by a valid
 25 lien;



1 (b) property to the extent it is generally exempt under
2 nonbankruptcy law; or

3 (c) an interest in property held in tenancy by the
4 entireties to the extent it is not subject to process by a
5 creditor holding a claim against only one tenant.

6 (3) "Claim" means a right to payment, whether or not
7 the right is reduced to judgment, liquidated, unliquidated,
8 fixed, contingent, matured, unmatured, disputed, undisputed,
9 legal, equitable, secured, or unsecured.

10 (4) "Creditor" means a person who has a claim.

11 (5) "Debt" means liability on a claim.

12 (6) "Debtor" means a person who is liable on a claim.

13 (7) "Insider" includes:

14 (a) if the debtor is an individual:

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

17 (ii) a partnership in which the debtor is a general
18 partner;

19 (iii) a general partner in a partnership described in
20 subsection (7)(a)(ii); or

21 (iv) a corporation of which the debtor is a director,
22 officer, or person in control;

23 (b) if the debtor is a corporation:

24 (i) a director of the debtor;

25 (ii) an officer of the debtor;

1 (iii) a person in control of the debtor;

2 (iv) a partnership in which the debtor is a general
3 partner;

4 (v) a general partner in a partnership described in
5 subsection (7)(b)(iv); or

6 (vi) a relative of a general partner, director, officer,
7 or person in control of the debtor;

8 (c) if the debtor is a partnership:

9 (i) a general partner in the debtor;

10 (ii) a relative of a general partner in, a general
11 partner of, or a person in control of the debtor;

12 (iii) another partnership in which the debtor is a
13 general partner;

14 (iv) a general partner in a partnership described in
15 subsection (7)(c)(iii); or

16 (v) a person in control of the debtor;

17 (d) an affiliate or an insider of an affiliate as if
18 the affiliate were the debtor; and

19 (e) a managing agent of the debtor.

20 (8) "Lien" means a charge against or an interest in
21 property to secure payment of a debt or performance of an
22 obligation and includes a security interest created by
23 agreement, a judicial lien obtained by legal or equitable
24 process or proceedings, a common-law lien, or a statutory
25 lien.

1 (9) "Person" means an individual, partnership,
2 corporation, association, organization, government or
3 governmental subdivision or agency, business trust, estate,
4 trust, or any other legal or commercial entity.

5 (10) "Property" means anything that may be the subject
6 of ownership.

7 (11) "Relative" means:

8 (a) an individual related by consanguinity within the
9 third degree as determined by the common law;

10 (b) a spouse or an individual related to a spouse
11 within the third degree as so determined; or

12 (c) an individual in an adoptive relationship within
13 the third degree.

14 (12) "Transfer" means every mode, direct or indirect,
15 absolute or conditional, voluntary or involuntary, of
16 disposing of or parting with an asset or an interest in an
17 asset and includes payment of money, release, lease, and
18 creation of a lien or other encumbrance.

19 (13) "Valid lien" means a lien that is effective against
20 the holder of a judicial lien subsequently obtained by legal
21 or equitable process or proceedings.

22 **NEW SECTION. Section 3. Insolvency.** (1) A debtor is
23 insolvent if the sum of the debtor's debts is greater than
24 all of the debtor's assets at a fair valuation.

25 (2) A debtor who is generally not paying his debts as

1 they become due is presumed to be insolvent.

2 (3) A partnership is insolvent under subsection (1) if
3 the sum of the partnership's debts is greater than the
4 aggregate, at a fair valuation, of all of the partnership's
5 assets and the sum of the excess of the value of each
6 general partner's nonpartnership assets over the partner's
7 nonpartnership debts.

8 (4) Assets under this section do not include property
9 that has been transferred, concealed, or removed with intent
10 to hinder, delay, or defraud creditors or that has been
11 transferred in a manner making the transfer voidable under
12 [sections 1 through 11].

13 (5) Debts under this section do not include an
14 obligation to the extent it is secured by a valid lien on
15 property of the debtor not included as an asset.

16 **NEW SECTION. Section 4. Value.** (1) Value is given for
17 a transfer or an obligation if, in exchange for the transfer
18 or obligation, property is transferred or an antecedent debt
19 is secured or satisfied, but value does not include an
20 unperformed promise made other than in the ordinary course
21 of the promisor's business to furnish support to the debtor
22 or another person.

23 (2) For the purposes of [section 5(1)(b) and 6], a
24 person gives a reasonably equivalent value if the person
25 acquires an interest of the debtor in an asset pursuant to a

1 regularly conducted, noncollusive foreclosure sale or
2 execution of a power of sale for the acquisition or
3 disposition of the interest of the debtor upon default under
4 a mortgage, deed of trust, or security agreement.

5 (3) A transfer is made for present value if the
6 exchange between the debtor and the transferee is intended
7 by them to be contemporaneous and is in fact substantially
8 contemporaneous.

9 NEW SECTION. **Section 5.** Transfers fraudulent as to
10 present and future creditors. (1) A transfer made or
11 obligation incurred by a debtor is fraudulent as to a
12 creditor, whether the creditor's claim arose before or after
13 the transfer was made or the obligation was incurred, if the
14 debtor made the transfer or incurred the obligation:

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

17 (b) without receiving a reasonably equivalent value in
18 exchange for the transfer or obligation and the debtor:

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

23 (ii) intended to incur, or believed or reasonably should
24 have believed that he would incur, debts beyond his ability
25 to pay as they became due.

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

4 (a) the transfer or obligation was to an insider;

5 (b) the debtor retained possession or control of the
6 property transferred after the transfer;

7 (c) the transfer or obligation was disclosed or
8 concealed;

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

11 (e) the transfer was of substantially all the debtor's
12 assets;

13 (f) the debtor absconded;

14 (g) the debtor removed or concealed assets;

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

18 (i) the debtor was insolvent or became insolvent
19 shortly after the transfer was made or the obligation was
20 incurred;

21 (j) the transfer occurred shortly before or shortly
22 after a substantial debt was incurred; or

23 (k) the debtor transferred the essential assets of the
24 business to a lienor who transferred the assets to an
25 insider of the debtor.

1 NEW SECTION. Section 6. Transfers fraudulent as to
 2 present creditors. (1) A transfer made or obligation
 3 incurred by a debtor is fraudulent as to a creditor whose
 4 claim arose before the transfer was made or the obligation
 5 was incurred if the debtor made the transfer or incurred the
 6 obligation without receiving a reasonably equivalent value
 7 in exchange for the transfer or obligation and the debtor
 8 was insolvent at that time or the debtor became insolvent as
 9 a result of the transfer or obligation.

10 (2) A transfer made by a debtor is fraudulent as to a
 11 creditor whose claim arose before the transfer was made if
 12 the transfer was made to an insider for an antecedent debt,
 13 the debtor was insolvent at that time, and the insider had
 14 reasonable cause to believe that the debtor was insolvent.

15 NEW SECTION. Section 7. When transfer made or
 16 obligation incurred. For the purposes of [sections 1 through
 17 11]:

18 (1) a transfer is made:

19 (a) with respect to an asset that is real property
 20 other than a fixture, but including the interest of a seller
 21 or purchaser under a contract for the sale of the asset,
 22 when the transfer is so far perfected that a good faith
 23 purchaser of the asset from the debtor against whom
 24 applicable law permits the transfer to be perfected cannot
 25 acquire an interest in the asset that is superior to the

1 interest of the transferee; and

2 (b) with respect to an asset that is not real property
 3 or that is a fixture, when the transfer is so far perfected
 4 that a creditor on a simple contract cannot acquire a
 5 judicial lien otherwise than under [sections 1 through 11]
 6 that is superior to the interest of the transferee;

7 (2) if applicable law permits the transfer to be
 8 perfected as provided in subsection (1) and the transfer is
 9 not perfected before the commencement of an action for
 10 relief under [sections 1 through 11], the transfer is
 11 considered made immediately before the commencement of the
 12 action;

13 (3) if applicable law does not permit the transfer to
 14 be perfected as provided in subsection (1), the transfer is
 15 considered made when it becomes effective between the debtor
 16 and the transferee;

17 (4) a transfer is not made until the debtor has
 18 acquired rights in the asset transferred;

19 (5) an obligation is incurred:

20 (a) if oral, when it becomes effective between the
 21 parties; or

22 (b) if evidenced in writing, when the writing executed
 23 by the obligor is delivered to or for the benefit of the
 24 obligee.

25 NEW SECTION. Section 8. Remedies of creditors. (1) In

1 an action for relief against a transfer or obligation under
2 [sections 1 through 11], a creditor, subject to the
3 limitations in [section 9], may obtain:

4 (a) avoidance of the transfer or obligation to the
5 extent necessary to satisfy the creditor's claim;

6 (b) an attachment or other provisional remedy against
7 the asset transferred or other property of the transferee in
8 accordance with the procedure prescribed by Title 27,
9 chapter 18; or

10 (c) subject to applicable principles of equity and in
11 accordance with applicable rules of civil procedure:

12 (i) an injunction against further disposition by the
13 debtor or a transferee, or both, of the asset transferred or
14 of other property;

15 (ii) appointment of a receiver to take charge of the
16 asset transferred or of other property of the transferee; or

17 (iii) any other relief the circumstances may require.

18 (2) If a creditor has obtained a judgment on a claim
19 against the debtor, the creditor, if the court so orders,
20 may levy execution on the asset transferred or its proceeds.

21 NEW SECTION. **Section 9. Defenses, liability, and**
22 **protection of transferee.** (1) A transfer or obligation is
23 not voidable under [section 5(1)(a)] against a person who
24 took in good faith and for a reasonably equivalent value or
25 against any subsequent transferee or obligee.

1 (2) Except as otherwise provided in this section, to
2 the extent a transfer is voidable in an action by a creditor
3 under [section 8(1)(a)], the creditor may recover judgment
4 for the value of the asset transferred, as adjusted under
5 subsection (3), or the amount necessary to satisfy the
6 creditor's claim, whichever is less. The judgment may be
7 entered against:

8 (a) the first transferee of the asset or the person for
9 whose benefit the transfer was made; or

10 (b) any subsequent transferee other than a good faith
11 transferee who took for value or from any subsequent
12 transferee.

13 (3) If the judgment under subsection (2) is based upon
14 the value of the asset transferred, the judgment must be for
15 an amount equal to the value of the asset at the time of the
16 transfer, subject to adjustment as the equities may require.

17 (4) Notwithstanding voidability of a transfer or an
18 obligation under [sections 1 through 11], a good faith
19 transferee or obligee is entitled, to the extent of the
20 value given the debtor for the transfer or obligation, to:

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

23 (b) enforcement of any obligation incurred; or

24 (c) a reduction in the amount of the liability on the
25 judgment.

1 (5) A transfer is not voidable under [sections 5(1)(b)
2 or 6] if the transfer results from:

3 (a) termination of a lease upon default by the debtor
4 when the termination is pursuant to the lease and applicable
5 law; or

6 (b) enforcement of a security interest in compliance
7 with Title 30, chapter 9.

8 (6) A transfer is not voidable under [section 6(2)]:

9 (a) to the extent the insider gave new value to or for
10 the benefit of the debtor after the transfer was made,
11 unless the new value was secured by a valid lien;

12 (b) if made in the ordinary course of business or
13 financial affairs of the debtor and the insider; or

14 (c) if made pursuant to a good faith effort to
15 rehabilitate the debtor and the transfer secured present
16 value given for that purpose as well as an antecedent debt
17 of the debtor.

18 NEW SECTION. **Section 10.** Extinguishment of cause of
19 action. A cause of action with respect to a fraudulent
20 transfer or obligation under [sections 1 through 11] is
21 extinguished unless action is brought under:

22 (1) [section 5(1)(a)] within 4 years after the transfer
23 was made or the obligation was incurred or, if later, within
24 1 year after the transfer or obligation was or could
25 reasonably have been discovered by the claimant;

1 (2) [section 5(1)(b) or 6(1)] within 4 years after the
2 transfer was made or the obligation was incurred; or

3 (3) [section 6(2)] within 1 year after the transfer was
4 made or the obligation was incurred.

5 NEW SECTION. **Section 11.** Supplementary provisions.

6 Unless displaced by the provisions of [sections 1 through
7 11], the principles of law and equity, including the law
8 merchant and the law relating to principal and agent,
9 estoppel, laches, fraud, misrepresentation, duress,
10 coercion, mistake, insolvency, or other validating or
11 invalidating cause, supplement its provisions.

12 NEW SECTION. **Section 12.** Uniformity of application and
13 construction. [Sections 1 through 12] must be applied and
14 construed to effectuate the general purpose of making
15 uniform the law with respect to the subject of [sections 1
16 through 12] among states enacting it.

17 **Section 13.** Section 53-5-401, MCA, is amended to read:

18 "53-5-401. Old-age assistance recovery. (1) Upon the
19 death of any recipient of old-age assistance, the department
20 of social and rehabilitation services shall execute and
21 present a claim against the estate of ~~such~~ the person within
22 the time specified in the published notice to creditors in
23 the estate matter for the total amount of assistance paid
24 under Chapter 82, Laws of 1937, as amended. ~~No~~ A claim ~~shall~~
25 may not be enforced against any real estate of a recipient

1 while it is occupied by the surviving spouse or dependent as
2 a home.

3 (2) Every transfer of property made by deed, grant,
4 bargain, sale, or gift by any recipient of old-age
5 assistance and recorded subsequent to his having received
6 such assistance ~~shall be~~ is presumed to have been made
7 without ~~fair---consideration~~ value, as the term "~~fair~~
8 ~~consideration~~" "value" is defined by 31-2-303 [section 4],
9 and with the intent to defeat the purposes of this section.
10 These presumptions are disputable and may be controverted by
11 competent evidence.

12 (3) If the federal law so requires, the federal
13 government ~~shall--be~~ is entitled to a share of any amounts
14 collected from recipients or their estates in proportion to
15 the amount ~~which~~ that it has contributed to the grants
16 recovered, and the amount due the United States ~~shall~~ must
17 be promptly paid by the state to the United States
18 government. The remaining portion of the amount collected
19 ~~shall~~ must be distributed to the state and county in
20 proportion to the total amount paid by each."

21 NEW SECTION. Section 14. Repealer. Sections 31-2-301,
22 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314,
23 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323,
24 31-2-324, and 31-2-325, MCA, are repealed.

25 NEW SECTION. Section 15. Codification instruction.

1 [Sections 1 through 12] are intended to be codified as an
2 integral part of Title 31, chapter 2, part 3, and the
3 provisions of Title 31, chapter 2, part 3, apply to
4 [sections 1 through 12].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 7

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE UNIFORM FRAUDULENT CONVEYANCES ACT WITH THE UNIFORM FRAUDULENT TRANSFER ACT; EXTENDING FRAUDULENT CONVEYANCE LAWS TO PERSONAL PROPERTY TRANSFERS; DEFINING TRANSFERS CONSIDERED FRAUDULENT; PROVIDING REMEDIES AND DEFENSES; PROVIDING FOR LIMITATIONS OF CAUSES OF ACTION; AMENDING SECTION 53-5-401, MCA; AND REPEALING SECTIONS 31-2-301, 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, AND 31-2-325, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [Sections 1 through 11] may be cited as the "Uniform Fraudulent Transfer Act".

NEW SECTION. **Section 2.** Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Affiliate" means:

(a) a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt if the person has not exercised the power to vote;

(c) a person whose business is operated by the debtor under a lease or other agreement or a person substantially all of whose assets are controlled by the debtor; or

(d) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) property to the extent it is encumbered by a valid lien;

SECOND READING



1 (b) property to the extent it is generally exempt under
2 nonbankruptcy law; or

3 (c) an interest in property held in tenancy by the
4 entireties to the extent it is not subject to process by a
5 creditor holding a claim against only one tenant.

6 (3) "Claim" means a right to payment, whether or not
7 the right is reduced to judgment, liquidated, unliquidated,
8 fixed, contingent, matured, unmatured, ~~disputed~~, ~~undisputed~~,
9 legal, equitable, secured, or unsecured.

10 (4) "Creditor" means a person who has a claim.

11 (5) "Debt" means liability on a claim.

12 (6) "Debtor" means a person who is liable on a claim.

13 (7) "Insider" includes:

14 (a) if the debtor is an individual:

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

17 (ii) a partnership in which the debtor is a general
18 partner;

19 (iii) a general partner in a partnership described in
20 subsection (7)(a)(ii); or

21 (iv) a corporation of which the debtor is a director,
22 officer, or person in control;

23 (b) if the debtor is a corporation:

24 (i) a director of the debtor;

25 (ii) an officer of the debtor;

1 (iii) a person in control of the debtor;

2 (iv) a partnership in which the debtor is a general
3 partner;

4 (v) a general partner in a partnership described in
5 subsection (7)(b)(iv); or

6 (vi) a relative of a general partner, director, officer,
7 or person in control of the debtor;

8 (c) if the debtor is a partnership:

9 (i) a general partner in the debtor;

10 (ii) a relative of a general partner in, a general
11 partner of, or a person in control of the debtor;

12 (iii) another partnership in which the debtor is a
13 general partner;

14 (iv) a general partner in a partnership described in
15 subsection (7)(c)(iii); or

16 (v) a person in control of the debtor;

17 (d) an affiliate or an insider of an affiliate as if
18 the affiliate were the debtor; and

19 (e) a managing agent of the debtor.

20 (8) "Lien" means a charge against or an interest in
21 property to secure payment of a debt or performance of an
22 obligation and includes a security interest created by
23 agreement, a judicial lien obtained by legal or equitable
24 process or proceedings, a common-law lien, or a statutory
25 lien.

1 (9) "Person" means an individual, partnership,
2 corporation, association, organization, government or
3 governmental subdivision or agency, business trust, estate,
4 trust, or any other legal or commercial entity.

5 (10) "Property" means anything that may be the subject
6 of ownership.

7 (11) "Relative" means:

8 (a) an individual related by consanguinity within the
9 third degree as determined by the common law;

10 (b) a spouse or an individual related to a spouse
11 within the third degree as so determined; or

12 (c) an individual in an adoptive relationship within
13 the third degree.

14 (12) "Transfer" means every mode, direct or indirect,
15 absolute or conditional, voluntary or involuntary, of
16 disposing of or parting with an asset or an interest in an
17 asset and includes payment of money, release, lease, and
18 creation of a lien or other encumbrance.

19 (13) "Valid lien" means a lien that is effective against
20 the holder of a judicial lien subsequently obtained by legal
21 or equitable process or proceedings.

22 NEW SECTION. Section 3. Insolvency. (1) A debtor is
23 insolvent if the sum of the debtor's debts is greater than
24 all of the debtor's ~~assets~~ PROPERTY at a fair valuation; AND
25 ~~(2) A~~ THE debtor who is generally not paying his debts

1 as they become due ~~is presumed to be insolvent.~~

2 ~~(3) A partnership is insolvent under subsection (1) if~~
3 ~~the sum of the partnership's debts is greater than the~~
4 ~~aggregate, at a fair valuation, of all of the partnership's~~
5 ~~assets and the sum of the excess of the value of each~~
6 ~~general partner's nonpartnership assets over the partner's~~
7 ~~nonpartnership debts.~~

8 ~~(4)(2)~~ Assets under this section do not include
9 property that has been transferred, concealed, or removed
10 with intent to hinder, delay, or defraud creditors or that
11 has been transferred in a manner making the transfer
12 voidable under {sections 1 through 11}.

13 ~~(5)(3)~~ Debts under this section do not include an
14 obligation to the extent it is secured by a valid lien on
15 property of the debtor not included as an asset.

16 NEW SECTION. Section 4. Value. (1) Value is given for
17 a transfer or an obligation if, in exchange for the transfer
18 or obligation, property is transferred or an antecedent debt
19 is secured or satisfied, but value does not include an
20 unperformed promise made other than in the ordinary course
21 of the promisor's business to furnish support to the debtor
22 or another person.

23 ~~(2) For the purposes of {section 5(1)(b) and 6}, a~~
24 ~~person gives a reasonably equivalent value if the person~~
25 ~~acquires an interest of the debtor in an asset pursuant to a~~

~~regularly--conducted,--noncollusive--foreclosure---sale---or
 execution--of--a--power--of--sale--for--the--acquisition--or
 disposition-of-the-interest-of-the-debtor-upon-default-under
 a-mortgage,--deed-of-trust,--or-security-agreement.~~

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

NEW SECTION. **Section 5.** Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent 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:

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

(b) 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 he would incur, debts beyond his ability to pay as they became due.

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

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

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

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

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

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

(f) the debtor absconded;

(g) the debtor removed or concealed assets;

(h) 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;

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

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

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

NEW SECTION. **Section 6. Transfers fraudulent as to present creditors.** (1) A transfer made or obligation incurred by a debtor is fraudulent 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.

(2) A transfer made by a debtor is fraudulent 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.

NEW SECTION. **Section 7. When transfer made or obligation incurred.** For the purposes of [sections 1 through 11]:

(1) a transfer is made:

(a) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the

interest of the transferee; and

(b) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under [sections 1 through 11] that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not perfected before the commencement of an action for relief under [sections 1 through 11], the transfer is considered made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is considered made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred;

(5) an obligation is incurred:

(a) if oral, when it becomes effective between the parties; or

(b) if evidenced in writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

NEW SECTION. **Section 8. Remedies of creditors.** (1) In

1 an action for relief against a transfer or obligation under
2 [sections 1 through 11], a creditor, subject to the
3 limitations in [section 9], may obtain:

4 (a) avoidance of the transfer or obligation to the
5 extent necessary to satisfy the creditor's claim;

6 (b) an attachment or other provisional remedy against
7 the asset transferred or other property of the transferee in
8 accordance with the procedure prescribed by Title 27,
9 chapter 18; or

10 (c) subject to applicable principles of equity and in
11 accordance with applicable rules of civil procedure:

12 (i) an injunction against further disposition by the
13 debtor or a transferee, or both, of the asset transferred or
14 of other property;

15 (ii) appointment of a receiver to take charge of the
16 asset transferred or of other property of the transferee; or

17 (iii) any other relief the circumstances may require.

18 (2) If a creditor has obtained a judgment on a claim
19 against the debtor, the creditor, if the court so orders,
20 may levy execution on the asset transferred or its proceeds.

21 **NEW SECTION. Section 9. Defenses, liability, and**
22 **protection of transferee.** (1) A transfer or obligation is
23 not voidable under [section 5(1)(a)] against a person who
24 took in good faith and for a reasonably equivalent value or
25 against any subsequent transferee or obligee.

1 (2) Except as otherwise provided in this section, to
2 the extent a transfer is voidable in an action by a creditor
3 under [section 8(1)(a)], the creditor may recover judgment
4 for the value of the asset transferred, as adjusted under
5 subsection (3), or the amount necessary to satisfy the
6 creditor's claim, whichever is less. The judgment may be
7 entered against:

8 (a) the first transferee of the asset or the person for
9 whose benefit the transfer was made; or

10 (b) any subsequent transferee other than a good faith
11 transferee who took for value or from any subsequent
12 transferee.

13 (3) If the judgment under subsection (2) is based upon
14 the value of the asset transferred, the judgment must be for
15 an amount equal to the value of the asset at the time of the
16 transfer, subject to adjustment as the equities may require.

17 (4) Notwithstanding voidability of a transfer or an
18 obligation under [sections 1 through 11], a good faith
19 transferee or obligee is entitled, to the extent of the
20 value given the debtor for the transfer or obligation, to:

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

23 (b) enforcement of any obligation incurred; or

24 (c) a reduction in the amount of the liability on the
25 judgment.

1 (5) A transfer is not voidable under [sections 5(1)(b)
2 or 6] if the transfer results from:

3 (a) termination of a lease upon default by the debtor
4 when the termination is pursuant to the lease and applicable
5 law; or

6 (b) enforcement of a security interest in compliance
7 with Title 30, chapter 9.

8 (6) A transfer is not voidable under [section 6(2)]:

9 (a) to the extent the insider gave new value to or for
10 the benefit of the debtor after the transfer was made,
11 unless the new value was secured by a valid lien;

12 (b) if made in the ordinary course of business or
13 financial affairs of the debtor and the insider; or

14 (c) if made pursuant to a good faith effort to
15 rehabilitate the debtor and the transfer secured present
16 value given for that purpose as well as an antecedent debt
17 of the debtor.

18 NEW SECTION. Section 10. Extinguishment of cause of
19 action. A cause of action with respect to a fraudulent
20 transfer or obligation under [sections 1 through 11] is
21 extinguished unless action is brought under:

22 (1) [section 5(1)(a)] within 4 2 years after the
23 transfer was made or the obligation was incurred or, if
24 later, within 1 year after the transfer or obligation was or
25 could reasonably have been discovered by the claimant;

1 (2) [section 5(1)(b) or 6(1)] within 4 2 years after
2 the transfer was made or the obligation was incurred; or

3 (3) [section 6(2)] within 1 year after the transfer was
4 made or the obligation was incurred.

5 NEW SECTION. Section 11. Supplementary provisions.
6 Unless displaced by the provisions of [sections 1 through
7 11], the principles of law and equity, including the law
8 merchant and the law relating to principal and agent,
9 estoppel, laches, fraud, misrepresentation, duress,
10 coercion, mistake, insolvency, or other validating or
11 invalidating cause, supplement its provisions.

12 NEW SECTION. Section 12. Uniformity of application and
13 construction. [Sections 1 through 12] must be applied and
14 construed to effectuate the general purpose of making
15 uniform the law with respect to the subject of [sections 1
16 through 12] among states enacting it.

17 Section 13. Section 53-5-401, MCA, is amended to read:

18 "53-5-401. Old-age assistance recovery. (1) Upon the
19 death of any recipient of old-age assistance, the department
20 of social and rehabilitation services shall execute and
21 present a claim against the estate of such the person within
22 the time specified in the published notice to creditors in
23 the estate matter for the total amount of assistance paid
24 under Chapter 82, Laws of 1937, as amended. No A claim shall
25 may not be enforced against any real estate of a recipient

1 while it is occupied by the surviving spouse or dependent as
2 a home.

3 (2) Every transfer of property made by deed, grant,
4 bargain, sale, or gift by any recipient of old-age
5 assistance and recorded subsequent to his having received
6 such assistance ~~shall--be~~ is presumed to have been made
7 without ~~fair--consideration~~ value, as the term "~~fair~~
8 ~~consideration~~" "value" is defined by ~~31-2-303~~ [section 4],
9 and with the intent to defeat the purposes of this section.
10 These presumptions are disputable and may be controverted by
11 competent evidence.

12 (3) If the federal law so requires, the federal
13 government ~~shall--be~~ is entitled to a share of any amounts
14 collected from recipients or their estates in proportion to
15 the amount ~~which that~~ it has contributed to the grants
16 recovered, and the amount due the United States ~~shall~~ must
17 be promptly paid by the state to the United States
18 government. The remaining portion of the amount collected
19 ~~shall~~ must be distributed to the state and county in
20 proportion to the total amount paid by each."

21 NEW SECTION. **Section 14. Repealer.** Sections 31-2-301,
22 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314,
23 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323,
24 31-2-324, and 31-2-325, MCA, are repealed.

25 NEW SECTION. **Section 15. Codification instruction.**

1 [Sections 1 through 12] are intended to be codified as an
2 integral part of Title 31, chapter 2, part 3, and the
3 provisions of Title 31, chapter 2, part 3, apply to
4 [sections 1 through 12].

-End-

1 SENATE BILL NO. 7
 2 INTRODUCED BY MAZUREK
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE UNIFORM
 5 FRAUDULENT CONVEYANCES ACT WITH THE UNIFORM FRAUDULENT
 6 TRANSFER ACT; EXTENDING FRAUDULENT CONVEYANCE LAWS TO
 7 PERSONAL PROPERTY TRANSFERS; DEFINING TRANSFERS CONSIDERED
 8 FRAUDULENT; PROVIDING REMEDIES AND DEFENSES; PROVIDING FOR
 9 LIMITATIONS OF CAUSES OF ACTION; AMENDING SECTION 53-5-401,
 10 MCA; AND REPEALING SECTIONS 31-2-301, 31-2-302, 31-2-303,
 11 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316,
 12 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, AND
 13 31-2-325, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. **Section 1.** Short title. [Sections 1
 17 through 11] may be cited as the "Uniform Fraudulent Transfer
 18 Act".

19 NEW SECTION. **Section 2.** Definitions. As used in
 20 [sections 1 through 11], the following definitions apply:

- 21 (1) "Affiliate" means:
 22 (a) a person who directly or indirectly owns, controls,
 23 or holds with power to vote 20% or more of the outstanding
 24 voting securities of the debtor, other than a person who
 25 holds the securities:

- 1 (i) as a fiduciary or agent without sole discretionary
 2 power to vote the securities; or
 3 (ii) solely to secure a debt if the person has not
 4 exercised the power to vote;
 5 (b) a corporation 20% or more of whose outstanding
 6 voting securities are directly or indirectly owned,
 7 controlled, or held with power to vote by the debtor or a
 8 person who directly or indirectly owns, controls, or holds
 9 with power to vote 20% or more of the outstanding voting
 10 securities of the debtor, other than a person who holds the
 11 securities:
 12 (i) as a fiduciary or agent without sole power to vote
 13 the securities; or
 14 (ii) solely to secure a debt if the person has not
 15 exercised the power to vote;
 16 (c) a person whose business is operated by the debtor
 17 under a lease or other agreement or a person substantially
 18 all of whose assets are controlled by the debtor; or
 19 (d) a person who operates the debtor's business under a
 20 lease or other agreement or controls substantially all of
 21 the debtor's assets.
 22 (2) "Asset" means property of a debtor, but the term
 23 does not include:
 24 (a) property to the extent it is encumbered by a valid
 25 lien;

THIRD READING



1 (b) property to the extent it is generally exempt under
2 nonbankruptcy law; or

3 (c) an interest in property held in tenancy by the
4 entireties to the extent it is not subject to process by a
5 creditor holding a claim against only one tenant.

6 (3) "Claim" means a right to payment, whether or not
7 the right is reduced to judgment, liquidated, unliquidated,
8 fixed, contingent, matured, unmatured, ~~disputed; undisputed;~~
9 legal, equitable, secured, or unsecured.

10 (4) "Creditor" means a person who has a claim.

11 (5) "Debt" means liability on a claim.

12 (6) "Debtor" means a person who is liable on a claim.

13 (7) "Insider" includes:

14 (a) if the debtor is an individual:

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

17 (ii) a partnership in which the debtor is a general
18 partner;

19 (iii) a general partner in a partnership described in
20 subsection (7)(a)(ii); or

21 (iv) a corporation of which the debtor is a director,
22 officer, or person in control;

23 (b) if the debtor is a corporation:

24 (i) a director of the debtor;

25 (ii) an officer of the debtor;

1 (iii) a person in control of the debtor;

2 (iv) a partnership in which the debtor is a general
3 partner;

4 (v) a general partner in a partnership described in
5 subsection (7)(b)(iv); or

6 (vi) a relative of a general partner, director, officer,
7 or person in control of the debtor;

8 (c) if the debtor is a partnership:

9 (i) a general partner in the debtor;

10 (ii) a relative of a general partner in, a general
11 partner of, or a person in control of the debtor;

12 (iii) another partnership in which the debtor is a
13 general partner;

14 (iv) a general partner in a partnership described in
15 subsection (7)(c)(iii); or

16 (v) a person in control of the debtor;

17 (d) an affiliate or an insider of an affiliate as if
18 the affiliate were the debtor; and

19 (e) a managing agent of the debtor.

20 (8) "Lien" means a charge against or an interest in
21 property to secure payment of a debt or performance of an
22 obligation and includes a security interest created by
23 agreement, a judicial lien obtained by legal or equitable
24 process or proceedings, a common-law lien, or a statutory
25 lien.

1 (9) "Person" means an individual, partnership,
2 corporation, association, organization, government or
3 governmental subdivision or agency, business trust, estate,
4 trust, or any other legal or commercial entity.

5 (10) "Property" means anything that may be the subject
6 of ownership.

7 (11) "Relative" means:

8 (a) an individual related by consanguinity within the
9 third degree as determined by the common law;

10 (b) a spouse or an individual related to a spouse
11 within the third degree as so determined; or

12 (c) an individual in an adoptive relationship within
13 the third degree.

14 (12) "Transfer" means every mode, direct or indirect,
15 absolute or conditional, voluntary or involuntary, of
16 disposing of or parting with an asset or an interest in an
17 asset and includes payment of money, release, lease, and
18 creation of a lien or other encumbrance.

19 (13) "Valid lien" means a lien that is effective against
20 the holder of a judicial lien subsequently obtained by legal
21 or equitable process or proceedings.

22 NEW SECTION. Section 3. Insolvency. (1) A debtor is
23 insolvent if the sum of the debtor's debts is greater than
24 all of the debtor's assets PROPERTY at a fair valuation. AND

25 ~~{2}~~ A THE debtor who is generally not paying his debts

1 as they become due ~~is presumed to be insolvent.~~

2 ~~{3}--A partnership is insolvent under subsection (1) if~~
3 ~~the sum of the partnership's debts is greater than the~~
4 ~~aggregate, at a fair valuation, of all of the partnership's~~
5 ~~assets and the sum of the excess of the value of each~~
6 ~~general partner's nonpartnership assets over the partner's~~
7 ~~nonpartnership debts.~~

8 ~~{4}{2}~~ Assets under this section do not include
9 property that has been transferred, concealed, or removed
10 with intent to hinder, delay, or defraud creditors or that
11 has been transferred in a manner making the transfer
12 voidable under [sections 1 through 11].

13 ~~{5}{3}~~ Debts under this section do not include an
14 obligation to the extent it is secured by a valid lien on
15 property of the debtor not included as an asset.

16 NEW SECTION. Section 4. Value. (1) Value is given for
17 a transfer or an obligation if, in exchange for the transfer
18 or obligation, property is transferred or an antecedent debt
19 is secured or satisfied, but value does not include an
20 unperformed promise made other than in the ordinary course
21 of the promisor's business to furnish support to the debtor
22 or another person.

23 ~~{2}--For the purposes of [section 5(1)(b)] and 6, a~~
24 ~~person gives a reasonably equivalent value if the person~~
25 ~~acquires an interest of the debtor in an asset pursuant to a~~

1 ~~regularly--conducted,--noncollusive--foreclosure--sale--or~~
 2 ~~execution--of--a--power--of--sale--for--the--acquisition--or~~
 3 ~~disposition--of--the--interest--of--the--debtor--upon--default--under~~
 4 ~~a--mortgage,--deed--of--trust,--or--security--agreement.~~

5 ~~(3)~~(2) A transfer is made for present value if the
 6 exchange between the debtor and the transferee is intended
 7 by them to be contemporaneous and is in fact substantially
 8 contemporaneous.

9 NEW SECTION. **Section 5.** Transfers fraudulent as to
 10 present and future creditors. (1) A transfer made or
 11 obligation incurred by a debtor is fraudulent as to a
 12 creditor, whether the creditor's claim arose before or after
 13 the transfer was made or the obligation was incurred, if the
 14 debtor made the transfer or incurred the obligation:

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

17 (b) without receiving a reasonably equivalent value in
 18 exchange for the transfer or obligation and the debtor:

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

23 (ii) intended to incur, or believed or reasonably should
 24 have believed that he would incur, debts beyond his ability
 25 to pay as they became due.

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

4 (a) the transfer or obligation was to an insider;

5 (b) the debtor retained possession or control of the
 6 property transferred after the transfer;

7 (c) the transfer or obligation was disclosed or
 8 concealed;

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

11 (e) the transfer was of substantially all the debtor's
 12 assets;

13 (f) the debtor absconded;

14 (g) the debtor removed or concealed assets;

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

18 (i) the debtor was insolvent or became insolvent
 19 shortly after the transfer was made or the obligation was
 20 incurred;

21 (j) the transfer occurred shortly before or shortly
 22 after a substantial debt was incurred; or

23 (k) the debtor transferred the essential assets of the
 24 business to a lienor who transferred the assets to an
 25 insider of the debtor.

1 NEW SECTION. Section 6. Transfers fraudulent as to
 2 **present creditors.** (1) A transfer made or obligation
 3 incurred by a debtor is fraudulent as to a creditor whose
 4 claim arose before the transfer was made or the obligation
 5 was incurred if the debtor made the transfer or incurred the
 6 obligation without receiving a reasonably equivalent value
 7 in exchange for the transfer or obligation and the debtor
 8 was insolvent at that time or the debtor became insolvent as
 9 a result of the transfer or obligation.

10 (2) A transfer made by a debtor is fraudulent as to a
 11 creditor whose claim arose before the transfer was made if
 12 the transfer was made to an insider for an antecedent debt,
 13 the debtor was insolvent at that time, and the insider had
 14 reasonable cause to believe that the debtor was insolvent.

15 NEW SECTION. Section 7. When transfer made or
 16 **obligation incurred.** For the purposes of [sections 1 through
 17 11]:

18 (1) a transfer is made:

19 (a) with respect to an asset that is real property
 20 other than a fixture, but including the interest of a seller
 21 or purchaser under a contract for the sale of the asset,
 22 when the transfer is so far perfected that a good faith
 23 purchaser of the asset from the debtor against whom
 24 applicable law permits the transfer to be perfected cannot
 25 acquire an interest in the asset that is superior to the

1 interest of the transferee; and

2 (b) with respect to an asset that is not real property
 3 or that is a fixture, when the transfer is so far perfected
 4 that a creditor on a simple contract cannot acquire a
 5 judicial lien otherwise than under [sections 1 through 11]
 6 that is superior to the interest of the transferee;

7 (2) if applicable law permits the transfer to be
 8 perfected as provided in subsection (1) and the transfer is
 9 not perfected before the commencement of an action for
 10 relief under [sections 1 through 11], the transfer is
 11 considered made immediately before the commencement of the
 12 action;

13 (3) if applicable law does not permit the transfer to
 14 be perfected as provided in subsection (1), the transfer is
 15 considered made when it becomes effective between the debtor
 16 and the transferee;

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 18 acquired rights in the asset transferred;

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20 (a) if oral, when it becomes effective between the
 21 parties; or

22 (b) if evidenced in writing, when the writing executed
 23 by the obligor is delivered to or for the benefit of the
 24 obligee.

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1 an action for relief against a transfer or obligation under
2 [sections 1 through 11], a creditor, subject to the
3 limitations in [section 9], may obtain:

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5 extent necessary to satisfy the creditor's claim;

6 (b) an attachment or other provisional remedy against
7 the asset transferred or other property of the transferee in
8 accordance with the procedure prescribed by Title 27,
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10 (c) subject to applicable principles of equity and in
11 accordance with applicable rules of civil procedure:

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13 debtor or a transferee, or both, of the asset transferred or
14 of other property;

15 (ii) appointment of a receiver to take charge of the
16 asset transferred or of other property of the transferee; or

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18 (2) If a creditor has obtained a judgment on a claim
19 against the debtor, the creditor, if the court so orders,
20 may levy execution on the asset transferred or its proceeds.

21 NEW SECTION. Section 9. Defenses, liability, and
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23 not voidable under [section 5(1)(a)] against a person who
24 took in good faith and for a reasonably equivalent value or
25 against any subsequent transferee or obligee.

1 (2) Except as otherwise provided in this section, to
2 the extent a transfer is voidable in an action by a creditor
3 under [section 8(1)(a)], the creditor may recover judgment
4 for the value of the asset transferred, as adjusted under
5 subsection (3), or the amount necessary to satisfy the
6 creditor's claim, whichever is less. The judgment may be
7 entered against:

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9 whose benefit the transfer was made; or

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11 transferee who took for value or from any subsequent
12 transferee.

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14 the value of the asset transferred, the judgment must be for
15 an amount equal to the value of the asset at the time of the
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20 value given the debtor for the transfer or obligation, to:

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22 asset transferred;

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6 (b) enforcement of a security interest in compliance
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10 the benefit of the debtor after the transfer was made,
11 unless the new value was secured by a valid lien;

12 (b) if made in the ordinary course of business or
13 financial affairs of the debtor and the insider; or

14 (c) if made pursuant to a good faith effort to
15 rehabilitate the debtor and the transfer secured present
16 value given for that purpose as well as an antecedent debt
17 of the debtor.

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20 transfer or obligation under [sections 1 through 11] is
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25 could reasonably have been discovered by the claimant;

1 (2) [section 5(1)(b) or 6(1)] within 4 2 years after
2 the transfer was made or the obligation was incurred; or

3 (3) [section 6(2)] within 1 year after the transfer was
4 made or the obligation was incurred.

5 **NEW SECTION. Section 11. Supplementary provisions.**

6 Unless displaced by the provisions of [sections 1 through
7 11], the principles of law and equity, including the law
8 merchant and the law relating to principal and agent,
9 estoppel, laches, fraud, misrepresentation, duress,
10 coercion, mistake, insolvency, or other validating or
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12 **NEW SECTION. Section 12. Uniformity of application and**
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11 competent evidence.

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24 31-2-324, and 31-2-325, MCA, are repealed.

25 NEW SECTION. Section 15. Codification instruction.

1 [Sections 1 through 12] are intended to be codified as an
2 integral part of Title 31, chapter 2, part 3, and the
3 provisions of Title 31, chapter 2, part 3, apply to
4 [sections 1 through 12].

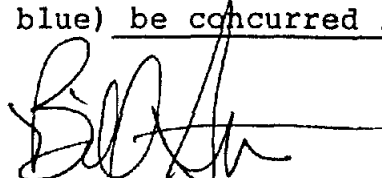
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HOUSE STANDING COMMITTEE REPORT

March 13, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 7 (third reading copy -- blue) be concurred in as amended .

Signed: 

Bill Strizich, Chairman

Carried by: Rep.Toole

And, that such amendments read:

1. Page 6, line 8.

Strike: "Assets"

Insert: "Property"

Strike: "do"

Insert: "does"

2. Page 6, lines 13 through 15.

Strike: subsection (3) in its entirety

HOUSE
SB 7

1 SENATE BILL NO. 7
 2 INTRODUCED BY MAZUREK
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE UNIFORM
 5 FRAUDULENT CONVEYANCES ACT WITH THE UNIFORM FRAUDULENT
 6 TRANSFER ACT; EXTENDING FRAUDULENT CONVEYANCE LAWS TO
 7 PERSONAL PROPERTY TRANSFERS; DEFINING TRANSFERS CONSIDERED
 8 FRAUDULENT; PROVIDING REMEDIES AND DEFENSES; PROVIDING FOR
 9 LIMITATIONS OF CAUSES OF ACTION; AMENDING SECTION 53-5-401,
 10 MCA; AND REPEALING SECTIONS 31-2-301, 31-2-302, 31-2-303,
 11 31-2-311, 31-2-312, 31-2-313, 31-2-314, 31-2-315, 31-2-316,
 12 31-2-317, 31-2-321, 31-2-322, 31-2-323, 31-2-324, AND
 13 31-2-325, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. Section 1. Short title. {Sections 1
 17 through 11} may be cited as the "Uniform Fraudulent Transfer
 18 Act".

19 NEW SECTION. Section 2. Definitions. As used in
 20 {sections 1 through 11}, the following definitions apply:

- 21 (1) "Affiliate" means:
 22 (a) a person who directly or indirectly owns, controls,
 23 or holds with power to vote 20% or more of the outstanding
 24 voting securities of the debtor, other than a person who
 25 holds the securities:

1 (i) as a fiduciary or agent without sole discretionary
 2 power to vote the securities; or

3 (ii) solely to secure a debt if the person has not
 4 exercised the power to vote;

5 (b) a corporation 20% or more of whose outstanding
 6 voting securities are directly or indirectly owned,
 7 controlled, or held with power to vote by the debtor or a
 8 person who directly or indirectly owns, controls, or holds
 9 with power to vote 20% or more of the outstanding voting
 10 securities of the debtor, other than a person who holds the
 11 securities:

12 (i) as a fiduciary or agent without sole power to vote
 13 the securities; or

14 (ii) solely to secure a debt if the person has not
 15 exercised the power to vote;

16 (c) a person whose business is operated by the debtor
 17 under a lease or other agreement or a person substantially
 18 all of whose assets are controlled by the debtor; or

19 (d) a person who operates the debtor's business under a
 20 lease or other agreement or controls substantially all of
 21 the debtor's assets.

22 (2) "Asset" means property of a debtor, but the term
 23 does not include:

24 (a) property to the extent it is encumbered by a valid
 25 lien;



1 (b) property to the extent it is generally exempt under
2 nonbankruptcy law; or

3 (c) an interest in property held in tenancy by the
4 entireties to the extent it is not subject to process by a
5 creditor holding a claim against only one tenant.

6 (3) "Claim" means a right to payment, whether or not
7 the right is reduced to judgment, liquidated, unliquidated,
8 fixed, contingent, matured, unmatured, ~~disputed~~, ~~undisputed~~,
9 legal, equitable, secured, or unsecured.

10 (4) "Creditor" means a person who has a claim.

11 (5) "Debt" means liability on a claim.

12 (6) "Debtor" means a person who is liable on a claim.

13 (7) "Insider" includes:

14 (a) if the debtor is an individual:

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

17 (ii) a partnership in which the debtor is a general
18 partner;

19 (iii) a general partner in a partnership described in
20 subsection (7)(a)(ii); or

21 (iv) a corporation of which the debtor is a director,
22 officer, or person in control;

23 (b) if the debtor is a corporation:

24 (i) a director of the debtor;

25 (ii) an officer of the debtor;

1 (iii) a person in control of the debtor;

2 (iv) a partnership in which the debtor is a general
3 partner;

4 (v) a general partner in a partnership described in
5 subsection (7)(b)(iv); or

6 (vi) a relative of a general partner, director, officer,
7 or person in control of the debtor;

8 (c) if the debtor is a partnership:

9 (i) a general partner in the debtor;

10 (ii) a relative of a general partner in, a general
11 partner of, or a person in control of the debtor;

12 (iii) another partnership in which the debtor is a
13 general partner;

14 (iv) a general partner in a partnership described in
15 subsection (7)(c)(iii); or

16 (v) a person in control of the debtor;

17 (d) an affiliate or an insider of an affiliate as if
18 the affiliate were the debtor; and

19 (e) a managing agent of the debtor.

20 (8) "Lien" means a charge against or an interest in
21 property to secure payment of a debt or performance of an
22 obligation and includes a security interest created by
23 agreement, a judicial lien obtained by legal or equitable
24 process or proceedings, a common-law lien, or a statutory
25 lien.

1 (9) "Person" means an individual, partnership,
2 corporation, association, organization, government or
3 governmental subdivision or agency, business trust, estate,
4 trust, or any other legal or commercial entity.

5 (10) "Property" means anything that may be the subject
6 of ownership.

7 (11) "Relative" means:

8 (a) an individual related by consanguinity within the
9 third degree as determined by the common law;

10 (b) a spouse or an individual related to a spouse
11 within the third degree as so determined; or

12 (c) an individual in an adoptive relationship within
13 the third degree.

14 (12) "Transfer" means every mode, direct or indirect,
15 absolute or conditional, voluntary or involuntary, of
16 disposing of or parting with an asset or an interest in an
17 asset and includes payment of money, release, lease, and
18 creation of a lien or other encumbrance.

19 (13) "Valid lien" means a lien that is effective against
20 the holder of a judicial lien subsequently obtained by legal
21 or equitable process or proceedings.

22 NEW SECTION. Section 3. Insolvency. (1) A debtor is
23 insolvent if the sum of the debtor's debts is greater than
24 all of the debtor's assets PROPERTY at a fair valuation= AND

25 ~~(2)--A~~ THE debtor who is generally not paying his debts

1 as they become due ~~is presumed to be insolvent.~~

2 ~~(3)--A partnership is insolvent under subsection (1)--if~~
3 ~~the--sum--of--the--partnership's--debts--is--greater--than--the~~
4 ~~aggregate, at a fair valuation, of all of the--partnership's~~
5 ~~assets--and--the--sum--of--the--excess--of--the--value--of--each~~
6 ~~general partner's nonpartnership assets over--the--partner's~~
7 ~~nonpartnership debts.~~

8 ~~(4)(2)~~ Assets PROPERTY under this section do DOES not
9 include property that has been transferred, concealed, or
10 removed with intent to hinder, delay, or defraud creditors
11 or that has been transferred in a manner making the transfer
12 voidable under [sections 1 through 11].

13 ~~(5)(3)--Debts under--this--section--do--not--include--an~~
14 ~~obligation--to--the--extent--it--is--secured--by--a--valid--lien--on~~
15 ~~property--of--the--debtor--not--included--as--an--asset.~~

16 NEW SECTION. Section 4. Value. (1) Value is given for
17 a transfer or an obligation if, in exchange for the transfer
18 or obligation, property is transferred or an antecedent debt
19 is secured or satisfied, but value does not include an
20 unperformed promise made other than in the ordinary course
21 of the promisor's business to furnish support to the debtor
22 or another person.

23 ~~(2)--For the purposes of--(section--5(1)(b)--and--6)--a~~
24 ~~person--gives--a--reasonably--equivalent--value--if--the--person~~
25 ~~acquires an interest of the debtor in an asset pursuant to a~~

1 regularly--conducted,--noncollusive--foreclosure---sale---or
 2 execution--of--a--power--of--sale--for--the--acquisition--or
 3 disposition-of-the-interest-of-the-debtor-upon-default-under
 4 a-mortgage,-deed-of-trust,-or-security-agreement.

5 †3‡(2) A transfer is made for present value if the
 6 exchange between the debtor and the transferee is intended
 7 by them to be contemporaneous and is in fact substantially
 8 contemporaneous.

9 NEW SECTION. Section 5. Transfers fraudulent as to
 10 present and future creditors. (1) A transfer made or
 11 obligation incurred by a debtor is fraudulent as to a
 12 creditor, whether the creditor's claim arose before or after
 13 the transfer was made or the obligation was incurred, if the
 14 debtor made the transfer or incurred the obligation:

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

17 (b) without receiving a reasonably equivalent value in
 18 exchange for the transfer or obligation and the debtor:

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

23 (ii) intended to incur, or believed or reasonably should
 24 have believed that he would incur, debts beyond his ability
 25 to pay as they became due.

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

4 (a) the transfer or obligation was to an insider;

5 (b) the debtor retained possession or control of the
 6 property transferred after the transfer;

7 (c) the transfer or obligation was disclosed or
 8 concealed;

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

11 (e) the transfer was of substantially all the debtor's
 12 assets;

13 (f) the debtor absconded;

14 (g) the debtor removed or concealed assets;

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

18 (i) the debtor was insolvent or became insolvent
 19 shortly after the transfer was made or the obligation was
 20 incurred;

21 (j) the transfer occurred shortly before or shortly
 22 after a substantial debt was incurred; or

23 (k) the debtor transferred the essential assets of the
 24 business to a lienor who transferred the assets to an
 25 insider of the debtor.

1 **NEW SECTION. Section 6. Transfers fraudulent as to**
 2 **present creditors.** (1) A transfer made or obligation
 3 incurred by a debtor is fraudulent as to a creditor whose
 4 claim arose before the transfer was made or the obligation
 5 was incurred if the debtor made the transfer or incurred the
 6 obligation without receiving a reasonably equivalent value
 7 in exchange for the transfer or obligation and the debtor
 8 was insolvent at that time or the debtor became insolvent as
 9 a result of the transfer or obligation.

10 (2) A transfer made by a debtor is fraudulent as to a
 11 creditor whose claim arose before the transfer was made if
 12 the transfer was made to an insider for an antecedent debt,
 13 the debtor was insolvent at that time, and the insider had
 14 reasonable cause to believe that the debtor was insolvent.

15 **NEW SECTION. Section 7. When transfer made or**
 16 **obligation incurred.** For the purposes of [sections 1 through
 17 11]:

18 (1) a transfer is made:

19 (a) with respect to an asset that is real property
 20 other than a fixture, but including the interest of a seller
 21 or purchaser under a contract for the sale of the asset,
 22 when the transfer is so far perfected that a good faith
 23 purchaser of the asset from the debtor against whom
 24 applicable law permits the transfer to be perfected cannot
 25 acquire an interest in the asset that is superior to the

1 interest of the transferee; and

2 (b) with respect to an asset that is not real property
 3 or that is a fixture, when the transfer is so far perfected
 4 that a creditor on a simple contract cannot acquire a
 5 judicial lien otherwise than under [sections 1 through 11]
 6 that is superior to the interest of the transferee;

7 (2) if applicable law permits the transfer to be
 8 perfected as provided in subsection (1) and the transfer is
 9 not perfected before the commencement of an action for
 10 relief under [sections 1 through 11], the transfer is
 11 considered made immediately before the commencement of the
 12 action;

13 (3) if applicable law does not permit the transfer to
 14 be perfected as provided in subsection (1), the transfer is
 15 considered made when it becomes effective between the debtor
 16 and the transferee;

17 (4) a transfer is not made until the debtor has
 18 acquired rights in the asset transferred;

19 (5) an obligation is incurred:

20 (a) if oral, when it becomes effective between the
 21 parties; or

22 (b) if evidenced in writing, when the writing executed
 23 by the obligor is delivered to or for the benefit of the
 24 obligee.

25 **NEW SECTION. Section 8. Remedies of creditors.** (1) In

1 an action for relief against a transfer or obligation under
2 [sections 1 through 11], a creditor, subject to the
3 limitations in [section 9], may obtain:

4 (a) avoidance of the transfer or obligation to the
5 extent necessary to satisfy the creditor's claim;

6 (b) an attachment or other provisional remedy against
7 the asset transferred or other property of the transferee in
8 accordance with the procedure prescribed by Title 27,
9 chapter 18; or

10 (c) subject to applicable principles of equity and in
11 accordance with applicable rules of civil procedure:

12 (i) an injunction against further disposition by the
13 debtor or a transferee, or both, of the asset transferred or
14 of other property;

15 (ii) appointment of a receiver to take charge of the
16 asset transferred or of other property of the transferee; or

17 (iii) any other relief the circumstances may require.

18 (2) If a creditor has obtained a judgment on a claim
19 against the debtor, the creditor, if the court so orders,
20 may levy execution on the asset transferred or its proceeds.

21 **NEW SECTION. Section 9. Defenses, liability, and**
22 **protection of transferee.** (1) A transfer or obligation is
23 not voidable under [section 5(1)(a)] against a person who
24 took in good faith and for a reasonably equivalent value or
25 against any subsequent transferee or obligee.

1 (2) Except as otherwise provided in this section, to
2 the extent a transfer is voidable in an action by a creditor
3 under [section 8(1)(a)], the creditor may recover judgment
4 for the value of the asset transferred, as adjusted under
5 subsection (3), or the amount necessary to satisfy the
6 creditor's claim, whichever is less. The judgment may be
7 entered against:

8 (a) the first transferee of the asset or the person for
9 whose benefit the transfer was made; or

10 (b) any subsequent transferee other than a good faith
11 transferee who took for value or from any subsequent
12 transferee.

13 (3) If the judgment under subsection (2) is based upon
14 the value of the asset transferred, the judgment must be for
15 an amount equal to the value of the asset at the time of the
16 transfer, subject to adjustment as the equities may require.

17 (4) Notwithstanding voidability of a transfer or an
18 obligation under [sections 1 through 11], a good faith
19 transferee or obligee is entitled, to the extent of the
20 value given the debtor for the transfer or obligation, to:

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

23 (b) enforcement of any obligation incurred; or

24 (c) a reduction in the amount of the liability on the
25 judgment.

1 (5) A transfer is not voidable under [sections 5(1)(b)
2 or 6] if the transfer results from:

3 (a) termination of a lease upon default by the debtor
4 when the termination is pursuant to the lease and applicable
5 law; or

6 (b) enforcement of a security interest in compliance
7 with Title 30, chapter 9.

8 (6) A transfer is not voidable under [section 6(2)]:

9 (a) to the extent the insider gave new value to or for
10 the benefit of the debtor after the transfer was made,
11 unless the new value was secured by a valid lien;

12 (b) if made in the ordinary course of business or
13 financial affairs of the debtor and the insider; or

14 (c) if made pursuant to a good faith effort to
15 rehabilitate the debtor and the transfer secured present
16 value given for that purpose as well as an antecedent debt
17 of the debtor.

18 **NEW SECTION. Section 10. Extinguishment of cause of**
19 **action.** A cause of action with respect to a fraudulent
20 transfer or obligation under [sections 1 through 11] is
21 extinguished unless action is brought under:

22 (1) [section 5(1)(a)] within 4 2 years after the
23 transfer was made or the obligation was incurred or, if
24 later, within 1 year after the transfer or obligation was or
25 could reasonably have been discovered by the claimant;

1 (2) [section 5(1)(b) or 6(1)] within 4 2 years after
2 the transfer was made or the obligation was incurred; or

3 (3) [section 6(2)] within 1 year after the transfer was
4 made or the obligation was incurred.

5 **NEW SECTION. Section 11. Supplementary provisions.**
6 Unless displaced by the provisions of [sections 1 through
7 11], the principles of law and equity, including the law
8 merchant and the law relating to principal and agent,
9 estoppel, laches, fraud, misrepresentation, duress,
10 coercion, mistake, insolvency, or other validating or
11 invalidating cause, supplement its provisions.

12 **NEW SECTION. Section 12. Uniformity of application and**
13 **construction.** [Sections 1 through 12] must be applied and
14 construed to effectuate the general purpose of making
15 uniform the law with respect to the subject of [sections 1
16 through 12] among states enacting it.

17 **Section 13.** Section 53-5-401, MCA, is amended to read:
18 "53-5-401. Old-age assistance recovery. (1) Upon the
19 death of any recipient of old-age assistance, the department
20 of social and rehabilitation services shall execute and
21 present a claim against the estate of such the person within
22 the time specified in the published notice to creditors in
23 the estate matter for the total amount of assistance paid
24 under Chapter 82, Laws of 1937, as amended. No A claim shall
25 may not be enforced against any real estate of a recipient

1 while it is occupied by the surviving spouse or dependent as
2 a home.

3 (2) Every transfer of property made by deed, grant,
4 bargain, sale, or gift by any recipient of old-age
5 assistance and recorded subsequent to his having received
6 such assistance ~~shall--be~~ is presumed to have been made
7 without ~~fair--consideration~~ value, as the term "~~fair~~
8 ~~consideration~~" "value" is defined by ~~31-2-303~~ [section 4],
9 and with the intent to defeat the purposes of this section.
10 These presumptions are disputable and may be controverted by
11 competent evidence.

12 (3) If the federal law so requires, the federal
13 government ~~shall--be~~ is entitled to a share of any amounts
14 collected from recipients or their estates in proportion to
15 the amount ~~which that~~ it has contributed to the grants
16 recovered, and the amount due the United States ~~shall~~ must
17 be promptly paid by the state to the United States
18 government. The remaining portion of the amount collected
19 ~~shall~~ must be distributed to the state and county in
20 proportion to the total amount paid by each."

21 NEW SECTION. Section 14. Repealer. Sections 31-2-301,
22 31-2-302, 31-2-303, 31-2-311, 31-2-312, 31-2-313, 31-2-314,
23 31-2-315, 31-2-316, 31-2-317, 31-2-321, 31-2-322, 31-2-323,
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25 NEW SECTION. Section 15. Codification instruction.

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3 provisions of Title 31, chapter 2, part 3, apply to
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-End-