

SENATE REPORT NO. 95-989

This section is derived in large part from section 67d of the Bankruptcy Act [section 107(d) of former title 11]. It permits the trustee to avoid transfers by the debtor in fraud of his creditors. Its history dates from the statute of 13 Eliz. c. 5 (1570).

The trustee may avoid fraudulent transfers or obligations if made with actual intent to hinder, delay, or defraud a past or future creditor. Transfers made for less than a reasonably equivalent consideration are also vulnerable if the debtor was or thereby becomes insolvent, was engaged in business with an unreasonably small capital, or intended to incur debts that would be beyond his ability to repay.

The trustee of a partnership debtor may avoid any transfer of partnership property to a partner in the debtor if the debtor was or thereby became insolvent.

If a transferee's only liability to the trustee is under this section, and if he takes for value and in good faith, then subsection (c) grants him a lien on the property transferred, or other similar protection.

Subsection (d) specifies that for the purposes of fraudulent transfer section, a transfer is made when it is valid against a subsequent bona fide purchaser. If not made before the commencement of the case, it is considered made immediately before then. Subsection (d) also defines "value" to mean property, or the satisfaction or securing of a present or antecedent debt, but does not include an unperformed promise to furnish support to the debtor or a relative of the debtor.

REFERENCES IN TEXT

Sections 170(c) and 731(c)(2)(C) of the Internal Revenue Code of 1986, referred to in subsec. (d)(3), (4), are classified to sections 170(c) and 731(c)(2)(C), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109-8, §1402(2), in introductory provisions, inserted "(including any transfer to or for the benefit of an insider under an employment contract)" after "avoid any transfer" and "(including any obligation to or for the benefit of an insider under an employment contract)" after "or any obligation".

Pub. L. 109-8, §1402(1), substituted "2 years" for "one year" in introductory provisions.

Subsec. (a)(1)(B)(ii)(IV). Pub. L. 109-8, §1402(3), added subcl. (IV).

Subsec. (b). Pub. L. 109-8, §1402(1), substituted "2 years" for "one year".

Subsec. (d)(2)(B). Pub. L. 109-8, §907(o)(4), inserted "financial participant," after "financial institution."

Subsec. (d)(2)(C). Pub. L. 109-8, §907(o)(5), inserted "or financial participant" after "repo participant".

Subsec. (d)(2)(D). Pub. L. 109-8, §907(o)(6), inserted "or financial participant" after "swap participant".

Subsec. (d)(2)(E). Pub. L. 109-8, §907(f), added subpar. (E).

Subsec. (e). Pub. L. 109-8, §1402(4), added subsec. (e).

1998—Subsec. (a). Pub. L. 105-183, §3(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as par. (1)(A) and (B), respectively, redesignated former par. (2)(A) and (B) as par. (1)(B)(i) and (ii), respectively, and redesignated former par. (2)(B)(i) to (iii) as par. (1)(B)(ii)(I) to (III), respectively, and added par. (2).

Subsec. (d)(3), (4). Pub. L. 105-183, §2, added pars. (3) and (4).

1994—Subsec. (d)(2)(B). Pub. L. 103-394, §501(b)(5)(A), substituted "section 101, 741, or 761" for "section 101(34), 741(5) or 761(15)" and "section 101 or 741" for "section 101(35) or 741(8)".

Subsec. (d)(2)(C). Pub. L. 103-394, §501(b)(5)(B), substituted "section 741 or 761" for "section 741(5) or 761(15)" and "section 741" for "section 741(8)".

1990—Subsec. (d)(2)(B). Pub. L. 101-311, §204, inserted reference to sections 101(34) and 101(35) of this title.

Subsec. (d)(2)(D). Pub. L. 101-311, §104, added subpar. (D).

1986—Subsec. (d)(2)(B). Pub. L. 99-554 substituted "financial institution" for "financial institution."

1984—Subsec. (a). Pub. L. 98-353, §463(a)(1), substituted "if the debtor voluntarily or involuntarily" for "if the debtor" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-353, §463(a)(2), substituted "was made" for "occurred".

Subsec. (a)(2)(B)(ii). Pub. L. 98-353, §463(a)(3), inserted "or a transaction" after "engaged in business".

Subsec. (c). Pub. L. 98-353, §463(b), inserted "or may retain" after "lien on" and struck out "may retain any lien transferred," before "or may enforce any obligation incurred".

Subsec. (d)(1). Pub. L. 98-353, §463(c)(1), substituted "is so" for "becomes so far", "applicable law permits such transfer to be" for "such transfer could have been", and "is made" for "occurs".

Subsec. (d)(2)(B). Pub. L. 98-353, §463(c)(2), inserted "financial institution," after "stockbroker".

Subsec. (d)(2)(C). Pub. L. 98-353, §394(2), added subpar. (C).

1982—Subsec. (d)(2)(B). Pub. L. 97-222 substituted "a commodity broker, forward contract merchant, stockbroker, or securities clearing agency that receives a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, takes for value to extent of such payment" for "a commodity broker or forward contract merchant that receives a margin payment, as defined in section 761(15) of this title, takes for value".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1402 of Pub. L. 109-8 effective Apr. 20, 2005, and applicable only with respect to cases commenced under this title on or after such date, with amendment by par. (1) of such section applicable only with respect to cases commenced under this title more than 1 year after Apr. 20, 2005, see section 1406 of Pub. L. 109-8, set out as a note under section 507 of this title.

Amendment by section 907 of Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-183 applicable to any case brought under an applicable provision of this title that is pending or commenced on or after June 19, 1998, see section 5 of Pub. L. 105-183, set out as a note under section 544 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 549. Postpetition transactions

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

(b) In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer of an interest in real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of—

- (1) two years after the date of the transfer sought to be avoided; or
- (2) the time the case is closed or dismissed.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2601; Pub. L. 98-353, title III, §464, July 10, 1984, 98 Stat. 379; Pub. L. 99-554, title II, §283(o), Oct. 27, 1986, 100 Stat. 3117; Pub. L. 103-394, title V, §501(d)(18), Oct. 22, 1994, 108 Stat. 4146; Pub. L. 109-8, title XII, §1214, Apr. 20, 2005, 119 Stat. 195.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 549 of the House amendment has been redrafted in order to incorporate sections 342(b) and (c) of the Senate amendment. Those sections have been consolidated and redrafted in section 549(c) of the House amendment. Section 549(d) of the House amendment adopts a provision contained in section 549(c) of the Senate amendment.

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This section modifies section 70d of current law [section 110(d) of former title 11]. It permits the trustee to avoid transfers of property that occur after the commencement of the case. The transfer must either have been unauthorized, or authorized under a section that protects only the transferor. Subsection (b) protects “involuntary gap” transferees to the extent of any value (including services, but not including satisfaction of a debt that arose before the commencement of the case), given after commencement in exchange for the transfer. Notice or knowledge of the transferee is irrelevant in determining whether he is protected under this provision.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109-8 inserted “an interest in” after “transfer of” in two places and substituted

“purchaser of such real property” for “purchaser of such property” and “such interest” for “the interest”.

1994—Subsec. (b). Pub. L. 103-394 inserted “the trustee may not avoid under subsection (a) of this section” after “involuntary case.”

1986—Subsec. (b). Pub. L. 99-554 substituted “made” for “that occurs”, and “to the extent” for “is valid against the trustee to the extent of”, and inserted “is” before “given”.

1984—Subsec. (a). Pub. L. 98-353, §464(a)(1), (2), substituted “(b) or (c)” for “(b) and (c)” in provisions preceding par. (1) and inserted “only” between “authorized” and “under” in par. (2)(A). In the original of Pub. L. 98-353, subsec. (a)(2) of section 464 thereof ended with a period but was followed by pars. (3), (4), and (5). Such pars. (3), (4), and (5) purported to amend subsec. (a) of this section in ways not susceptible of execution. In a predecessor bill [S. 445], these pars. (3), (4), and (5) formed a part of a subsec. (b) of section 361 thereof which amended subsec. (b) of this section. Such subsec. (b) of section 361 of S. 445 was not carried into Pub. L. 98-353, §464.

Subsec. (c). Pub. L. 98-353, §464(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The trustee may not avoid under subsection (a) of this section a transfer, to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value or to a purchaser at a judicial sale, of real property located other than in the county in which the case is commenced, unless a copy of the petition was filed in the office where conveyances of real property in such county are recorded before such transfer was so far perfected that a bona fide purchaser of such property against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of such good faith or judicial sale purchaser. A good faith purchaser, without knowledge of the commencement of the case and for less than present fair equivalent value, of real property located other than in the county in which the case is commenced, under a transfer that the trustee may avoid under this section, has a lien on the property transferred to the extent of any present value given, unless a copy of the petition was so filed before such transfer was so perfected.”

Subsec. (d)(1). Pub. L. 98-353, §464(d), substituted “or” for “and”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or