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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **1384**

April 5, 2011

Authored by Davids, Johnson, Smith, Shimanski, Champion and others
The bill was read for the first time and referred to the Committee on Civil Law

April 14, 2011

By motion, recalled and re-referred to the Committee on Judiciary Policy and Finance

April 28, 2011

Committee Recommendation and Adoption of Report:
To Pass as Amended and re-referred to the Committee on Commerce and Regulatory Reform

May 2, 2011

Committee Recommendation and Adoption of Report:
To Pass as Amended
Read Second Time

1.1 A bill for an act
1.2 relating to fraudulent transfers; excluding certain transfers to charitable or
1.3 religious organizations from the fraudulent transfers act; amending Minnesota
1.4 Statutes 2010, section 513.41.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2010, section 513.41, is amended to read:

1.7 **513.41 DEFINITIONS.**

1.8 As used in sections 513.41 to 513.51:

1.9 (1) "Affiliate" means:

1.10 (i) a person who directly or indirectly owns, controls, or holds with power to vote,
1.11 20 percent or more of the outstanding voting securities of the debtor, other than a person
1.12 who holds the securities,

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

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

1.15 (ii) a corporation 20 percent or more of whose outstanding voting securities are
1.16 directly or indirectly owned, controlled, or held with power to vote, by the debtor or a
1.17 person who directly or indirectly owns, controls, or holds with power to vote, 20 percent
1.18 or more of the outstanding voting securities of the debtor, other than a person who holds
1.19 the securities,

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

1.21 (B) solely to secure a debt, if the person has not in fact exercised the power to vote;

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

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

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

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

2.5 (ii) property to the extent it is generally exempt under nonbankruptcy law; or

2.6 (iii) an interest in property held in tenancy by the entireties to the extent it is not
2.7 subject to process by a creditor holding a claim against only one tenant.

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

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

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

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

2.14 (7) "Insider" includes:

2.15 (i) if the debtor is an individual,

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

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

2.18 (C) a general partner in a partnership described in clause (B); or

2.19 (D) a corporation of which the debtor is a director, officer, or a person in control;

2.20 (ii) if the debtor is a corporation,

2.21 (A) a director of the debtor;

2.22 (B) an officer of the debtor;

2.23 (C) a person in control of the debtor;

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

2.25 (E) a general partner in a partnership described in clause (D); or

2.26 (F) a relative of a general partner, director, officer, or person in control of the debtor;

2.27 (iii) if the debtor is a partnership,

2.28 (A) a general partner in the debtor;

2.29 (B) a relative of a general partner in, or a general partner of, or a person in control
2.30 of the debtor;

2.31 (C) another partnership in which the debtor is a general partner;

2.32 (D) a general partner in a partnership described in clause (C); or

2.33 (E) a person in control of the debtor;

2.34 (iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

2.35 (v) a managing agent of the debtor.

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

3.5 (9) "Person" means an individual, partnership, corporation, association, organization,
3.6 government or governmental subdivision or agency, business trust, estate, trust, or any
3.7 other legal or commercial entity.

3.8 (10) "Property" means anything that may be subject of ownership.

3.9 (11) "Relative" means an individual related by consanguinity within the third degree
3.10 as determined by the common law, a spouse, or an individual related to a spouse within
3.11 the third degree as so determined, and includes an individual in an adoptive relationship
3.12 within the third degree.

3.13 (12) "Transfer" means every mode, direct or indirect, absolute or conditional,
3.14 voluntary or involuntary, of disposing of or parting with an asset or an interest in an
3.15 asset, and includes payment of money, release, lease, and creation of a lien or other
3.16 encumbrance. "Transfer" does not mean or include a contribution of money or an asset
3.17 made to a qualified charitable or religious organization or entity unless within 60 days
3.18 after the contribution the organization or entity had reasonable cause to believe either that:

3.19 (i) the debtor made the charitable contribution with actual intent to hinder, delay,
3.20 or defraud any creditor of the debtor, or

3.21 (ii) the debtor:

3.22 (A) was insolvent at the time of the contribution or would be rendered insolvent by
3.23 reason of the contribution;

3.24 (B) was engaged or was about to engage in a business or a transaction for which
3.25 the remaining assets of the debtor were unreasonably small in relation to the business or
3.26 transaction; or

3.27 (C) intended to incur, or believed or reasonably should have believed that the debtor
3.28 would incur, debts beyond the debtor's ability to pay as the debts become due.

3.29 Transfer does include a return on investment made by a qualified charitable
3.30 or religious organization or entity. "Qualified charitable or religious organization or
3.31 entity" means an organization or entity described in United States Code, title 26, section
3.32 170(c)(1), (2), or (3). The burden of proving that an organization or entity had reason to
3.33 believe that one of the two exceptions in this section applies is on the creditor. This
3.34 section does not impose any duty on a charitable organization or entity to make inquiry
3.35 regarding the financial status of a contributor.

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

4.3 **EFFECTIVE DATE.** This section is effective the day following final enactment
4.4 and applies to a cause of action existing on, or arising on or after that date.