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HOUSE BILL 85

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Eliseo Lee Alcon

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COMMERCE; MAKING CHANGES TO THE UNIFORM COMMERCIAL
CODE AS ENACTED IN NEW MEXICO TO MAKE IT UNIFORM; AMENDING
SECTIONS OF THE UNIFORM FRAUDULENT TRANSFER ACT; CHANGING THE
NAME OF THE UNIFORM FRAUDULENT TRANSFER ACT TO THE UNIFORM
VOIDABLE TRANSACTIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 55-2A-529 NMSA 1978 (being Laws 1992,
Chapter 114, Section 84) is amended to read:

"55-2A-529. LESSOR'S ACTION FOR THE RENT.--

(1) After default by the lessee under the lease
contract of the type described in Section 55-2A-523(1) or
55-2A-523(3)(a) NMSA 1978 or, if agreed, after other default by
the lessee, if the lessor complies with Subsection (2) of this
section, the lessor may recover from the lessee as damages:

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1 (a) for goods accepted by the lessee and not
2 repossessed by or tendered to the lessor, and for conforming
3 goods lost or damaged within a commercially reasonable time
4 after risk of loss passes to the lessee (Section 55-2A-219 NMSA
5 1978), (i) accrued and unpaid rent as of the date of entry of
6 judgment in favor of the lessor, (ii) the present value as of
7 the same date of the rent for the then remaining lease term of
8 the lease agreement, and (iii) any incidental damages allowed
9 under Section 55-2A-530 NMSA 1978, less expenses saved in
10 consequence of the lessee's default; and

11 (b) for goods identified to the lease contract
12 if the lessor is unable after reasonable effort to dispose of
13 them at a reasonable price or the circumstances reasonably
14 indicate that effort will be unavailing, (i) accrued and unpaid
15 rent as of the date of entry of judgment in favor of the
16 lessor, (ii) the present value as of the same date of the rent
17 for the then remaining lease term of the lease agreement, and
18 (iii) any incidental damages allowed under Section 55-2A-530
19 NMSA 1978, less expenses saved in consequence of the lessee's
20 default.

21 (2) Except as provided in Subsection (3) of this
22 section, the lessor shall hold for the lessee for the remaining
23 lease term of the lease agreement any goods that have been
24 identified to the lease contract and are in the lessor's
25 control.

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1 (3) The lessor may dispose of the goods at any time
2 before collection of the judgment for damages obtained pursuant
3 to Subsection (1) of this section. If the disposition is
4 before the end of the remaining lease term of the lease
5 agreement, the lessor's recovery against the lessee for damages
6 is governed by Section 55-2A-527 or 55-2A-528 NMSA 1978, and
7 the lessor will cause an appropriate credit to be provided
8 against a judgment for damages to the extent that the amount of
9 the judgment exceeds the recovery available pursuant to Section
10 55-2A-527 or 55-2A-528 NMSA 1978.

11 (4) Payment of the judgment for damages obtained
12 pursuant to Subsection (1) of this section entitles the lessee
13 to the use and possession of the goods not then disposed of for
14 the remaining lease term of and in accordance with the lease
15 agreement.

16 (5) After default by the lessee under the lease
17 contract of the type described in Section 55-2A-523(1) or
18 Section 55-2A-523(3)(a) NMSA 1978 or, if agreed, after other
19 default by the lessee, a lessor who is held not entitled to
20 rent under this section must nevertheless be awarded damages
21 for non-acceptance under Section 55-2A-527 or 55-2A-528 NMSA
22 1978."

23 **SECTION 2.** Section 55-3-415 NMSA 1978 (being Laws 1992,
24 Chapter 114, Section 140) is amended to read:

25 "55-3-415. OBLIGATION OF INDORSER.--

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1 (a) Subject to Subsections (b), (c), [~~and~~] (d) and
2 (e) of this section and to Section 55-3-419(d) NMSA 1978, if an
3 instrument is dishonored, an indorser is obliged to pay the
4 amount due on the instrument (i) according to the terms of the
5 instrument at the time it was indorsed or (ii) if the indorser
6 indorsed an incomplete instrument, according to its terms when
7 completed, to the extent stated in Sections 55-3-115 and
8 55-3-407 NMSA 1978. The obligation of the indorser is owed to
9 a person entitled to enforce the instrument or to a subsequent
10 indorser who paid the instrument under this section.

11 (b) If an indorsement states that it is made
12 "without recourse" or otherwise disclaims liability of the
13 indorser, the indorser is not liable under Subsection (a) of
14 this section to pay the instrument.

15 (c) If notice of dishonor of an instrument is
16 required by Section 55-3-503 NMSA 1978 and notice of dishonor
17 complying with that section is not given to an indorser, the
18 liability of the indorser under Subsection (a) of this section
19 is discharged.

20 (d) If a draft is accepted by a bank after an
21 indorsement is made, the liability of the indorser under
22 Subsection (a) of this section is discharged.

23 (e) If an indorser of a check is liable under
24 Subsection (a) of this section and the check is not presented
25 for payment, or given to a depository bank for collection,

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1 within thirty days after the day the indorsement was made, the
2 liability of the indorser under Subsection (a) of this section
3 is discharged."

4 SECTION 3. Section 55-4A-106 NMSA 1978 (being Laws 1992,
5 Chapter 114, Section 202, as amended) is amended to read:

6 "55-4A-106. TIME PAYMENT ORDER IS RECEIVED.--

7 (a) The time of receipt of a payment order or
8 communication canceling or amending a payment order is
9 determined by the rules applicable to receipt of a notice
10 stated in Section 55-1-202 NMSA 1978. A receiving bank may fix
11 a cut-off time or times on a funds-transfer business day for
12 the receipt and processing of payment orders and communications
13 canceling or amending payment orders. Different cut-off times
14 may apply to payment orders, cancellations or amendments, or to
15 different categories of payment orders, cancellations or
16 amendments. A cut-off time may apply to senders generally or
17 different cut-off times may apply to different senders or
18 categories of payment orders. If a payment order or
19 communication canceling or amending a payment order is received
20 after the close of a funds-transfer business day or after the
21 appropriate cut-off time on a funds-transfer business day, the
22 receiving bank may treat the payment order or communication as
23 received at the opening of the next funds-transfer business
24 day.

25 (b) If this article refers to an execution date or

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1 payment date or states a day on which a receiving bank is
2 required to take action, and the date or day does not fall on a
3 funds-transfer business day, the next day that is a funds-
4 transfer business day is treated as the date or day stated,
5 unless the contrary is stated in this article."

6 SECTION 4. Section 55-9-331 NMSA 1978 (being Laws 2001,
7 Chapter 139, Section 51) is amended to read:

8 "55-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF
9 INSTRUMENTS, DOCUMENTS AND SECURITIES UNDER OTHER ARTICLES--
10 PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY
11 ENTITLEMENTS UNDER CHAPTER 55, ARTICLE 8 NMSA 1978.--

12 (a) Chapter 55, Article 9 NMSA 1978 does not limit
13 the rights of a holder in due course of a negotiable
14 instrument, a holder to which a negotiable document of title
15 has been duly negotiated or a protected purchaser of a
16 security. These holders or purchasers take priority over an
17 earlier security interest, even if perfected, to the extent
18 provided in Chapter 55, Articles 3, 7 and 8 NMSA 1978.

19 (b) Chapter 55, Article 9 NMSA 1978 does not limit
20 the rights of or impose liability on a person to the extent
21 that the person is protected against the assertion of [~~an~~
22 ~~adverse~~] a claim under Chapter 55, Article 8 NMSA 1978.

23 (c) Filing under Chapter 55, Article 9 NMSA 1978
24 does not constitute notice of a claim or defense to the
25 holders, or purchasers, or persons described in Subsections (a)

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1 and (b) of this section."

2 SECTION 5. Section 55-9-502 NMSA 1978 (being Laws 2001,
3 Chapter 139, Section 73, as amended) is amended to read:

4 "55-9-502. CONTENTS OF FINANCING STATEMENT--RECORD OF
5 MORTGAGE AS FINANCING STATEMENT--TIME OF FILING FINANCING
6 STATEMENT.--

7 (a) Subject to Subsection (b) of this section, a
8 financing statement is sufficient only if it:

- 9 (1) provides the name of the debtor;
- 10 (2) provides the name of the secured party or
11 a representative of the secured party; and
- 12 (3) indicates the collateral covered by the
13 financing statement.

14 (b) Except as otherwise provided in Subsection (b)
15 of Section 55-9-501 NMSA 1978, to be sufficient a financing
16 statement that covers as-extracted collateral or timber to be
17 cut, or that is filed as a fixture filing and covers goods that
18 are or are to become fixtures, must satisfy Subsection (a) of
19 this section and also:

- 20 (1) indicate that it covers this type of
21 collateral;
- 22 (2) indicate that it is to be filed for record
23 in the real property records;
- 24 (3) provide a description of the real property
25 to which the collateral is related sufficient to give

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1 constructive notice of a mortgage pursuant to the laws of this
2 state if the description were contained in a record of the
3 mortgage of the real property; and

4 (4) if the debtor does not have an interest of
5 record in the real property, provide the name of a record
6 owner.

7 (c) A record of a mortgage is effective, from the
8 date it is filed for record, as a financing statement filed as
9 a fixture filing or as a financing statement covering as-
10 extracted collateral or timber to be cut only if:

11 (1) the record indicates the goods or accounts
12 that it covers;

13 (2) the goods are or are to become fixtures
14 related to the real property described in the record or the
15 collateral is related to the real property described in the
16 record and is as-extracted collateral or timber to be cut;

17 (3) the record satisfies the requirements for
18 a financing statement in this section but:

19 (A) the record need not indicate that it
20 is to be filed for record in the real property records; and

21 (B) the record sufficiently provides the
22 name of a debtor who is an individual if it provides the
23 individual name of the debtor or the surname and first personal
24 name of the debtor, even if the debtor is an individual to whom
25 Paragraph (4) of Subsection (a) of Section 55-9-503 NMSA 1978

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1 applies; and

2 (4) the record is duly recorded.

3 (d) A financing statement may be filed before a
4 security agreement is made or a security interest otherwise
5 attaches."

6 SECTION 6. Section 55-9-512 NMSA 1978 (being Laws 2001,
7 Chapter 139, Section 83) is amended to read:

8 "55-9-512. AMENDMENT OF FINANCING STATEMENT.--

9 (a) Subject to Section 55-9-509 NMSA 1978, a person
10 may add or delete collateral covered by, continue or terminate
11 the effectiveness of, or, subject to Subsection (e) of this
12 section, otherwise amend the information provided in, a
13 financing statement by filing an amendment that:

14 (1) identifies, by its file number, the
15 initial financing statement to which the amendment relates; and

16 (2) if the amendment relates to an initial
17 financing statement filed for record in a county clerk's
18 office, provides the information specified in Subsection (b) of
19 Section 55-9-502 NMSA 1978.

20 (b) Except as otherwise provided in Section
21 55-9-515 NMSA 1978, the filing of an amendment does not extend
22 the period of effectiveness of the financing statement.

23 (c) A financing statement that is amended by an
24 amendment that adds collateral is effective as to the added
25 collateral only from the date of the filing of the amendment.

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1 (d) A financing statement that is amended by an
2 amendment that adds a debtor is effective as to the added
3 debtor only from the date of the filing of the amendment.

4 (e) An amendment is ineffective to the extent it:

5 (1) purports to delete all debtors and fails
6 to provide the name of a debtor to be covered by the financing
7 statement; or

8 (2) purports to delete all secured parties of
9 record and fails to provide the name of a new secured party of
10 record."

11 SECTION 7. A new section of the Uniform Commercial Code
12 is enacted to read:

13 "[NEW MATERIAL] PRESUMPTION THAT RULE OF LAW CONTINUES
14 UNCHANGED.--The provisions of this act shall be deemed
15 declaratory of the meaning of the Uniform Commercial Code as
16 that code existed prior to July 1, 2015."

17 SECTION 8. Section 56-10-14 NMSA 1978 (being Laws 1989,
18 Chapter 382, Section 1) is amended to read:

19 "56-10-14. SHORT TITLE.--~~[This act]~~ Sections 56-10-14
20 through 56-10-29 NMSA 1978 may be cited as the "Uniform
21 ~~[Fraudulent Transfer]~~ Voidable Transactions Act."

22 SECTION 9. Section 56-10-15 NMSA 1978 (being Laws 1989,
23 Chapter 382, Section 2) is amended to read:

24 "56-10-15. DEFINITIONS.--As used in the Uniform
25 ~~[Fraudulent Transfer]~~ Voidable Transactions Act:

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A. "affiliate" means:

(1) a person [~~who~~] that directly or indirectly owns, controls or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person [~~who~~] that holds the securities:

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

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

(2) a corporation, twenty percent 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~~] that directly or indirectly owns, controls or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person [~~who~~] that holds the securities:

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

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

(3) 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

(4) a person [~~who~~] that operates the debtor's

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1 business under a lease or other agreement or controls
2 substantially all of the debtor's assets;

3 B. "asset" means property of a debtor, but the term
4 does not include:

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

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

9 (3) an interest in property held in tenancy by
10 the entirety to the extent it is not subject to process by a
11 creditor holding a claim against only one tenant;

12 C. "claim", except when used in the phrase "claim
13 for relief", means a right to payment, whether or not the right
14 is reduced to judgment, liquidated, unliquidated, fixed,
15 contingent, matured, unmatured, disputed, undisputed, legal,
16 equitable, secured or unsecured;

17 D. "creditor" means a person [~~who~~] that has a
18 claim;

19 E. "debt" means liability on a claim;

20 F. "debtor" means a person [~~who~~] that is liable on
21 a claim;

22 G. "electronic" means relating to technology having
23 electrical, digital, magnetic, wireless, optical,
24 electromagnetic or similar capabilities;

25 [~~G-~~] H. "insider" includes:

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- 1 (1) if the debtor is an individual:
- 2 (a) a relative of the debtor or of a
- 3 general partner of the debtor;
- 4 (b) a partnership in which the debtor is
- 5 a general partner;
- 6 (c) a general partner in a partnership
- 7 described in Subparagraph (b) of this paragraph; or
- 8 (d) a corporation of which the debtor is
- 9 a director, officer or person in control;
- 10 (2) if the debtor is a corporation:
- 11 (a) a director of the debtor;
- 12 (b) an officer of the debtor;
- 13 (c) a person in control of the debtor;
- 14 (d) a partnership in which the debtor is
- 15 a general partner;
- 16 (e) a general partner in a partnership
- 17 described in Subparagraph (d) of this paragraph; or
- 18 (f) a relative of a general partner,
- 19 director, officer or person in control of the debtor;
- 20 (3) if the debtor is a partnership:
- 21 (a) a general partner in the debtor;
- 22 (b) a relative of a general partner in,
- 23 a general partner of, or a person in control of the debtor;
- 24 (c) another partnership in which the
- 25 debtor is a general partner;

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1 (d) a general partner in a partnership
2 described in Subparagraph (c) of this paragraph; or

3 (e) a person in control of the debtor;

4 (4) an affiliate or an insider of an affiliate
5 as if the affiliate were the debtor; and

6 (5) a managing agent of the debtor;

7 [~~H.~~] I. "lien" means a charge against or an
8 interest in property to secure payment of a debt or performance
9 of an obligation and includes a security interest created by
10 agreement, a judicial lien obtained by legal or equitable
11 process or proceedings, a common-law lien or a statutory lien;

12 J. "organization" means a person other than an
13 individual;

14 [~~I.~~] K. "person" means an individual, [~~partnership,~~
15 ~~corporation, association, organization, government or~~
16 ~~governmental subdivision or agency, business trust, estate,~~
17 ~~trust or any other legal or commercial entity] an estate, a
18 business or nonprofit entity, a public corporation, a
19 government or governmental subdivision, an agency, an
20 instrumentality or another legal entity;~~

21 [~~J.~~] L. "property" means anything that may be the
22 subject of ownership;

23 M. "record" means information that is inscribed on
24 a tangible medium or that is stored in an electronic or other
25 medium and is retrievable in perceivable form;

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1 [K-] N. "relative" means an individual related by
2 consanguinity within the third degree as determined by the
3 common law, a spouse or an individual related to a spouse
4 within the third degree as so determined, and includes an
5 individual in an adoptive relationship within the third degree;

6 O. "sign" means, with present intent to
7 authenticate or adopt a record, to:

8 (1) execute or adopt a tangible symbol; or

9 (2) attach to or logically associate with the
10 record an electronic symbol, a sound or a process;

11 [L-] P. "transfer" means every mode, direct or
12 indirect, absolute or conditional, voluntary or involuntary, of
13 disposing of or parting with an asset or an interest in an
14 asset and includes payment of money, release, lease, license
15 and creation of a lien or other encumbrance; and

16 [M-] Q. "valid lien" means a lien that is effective
17 against the holder of a judicial lien subsequently obtained by
18 legal or equitable process or proceedings."

19 SECTION 10. Section 56-10-16 NMSA 1978 (being Laws 1989,
20 Chapter 382, Section 3) is amended to read:

21 "56-10-16. INSOLVENCY.--

22 A. A debtor is insolvent if, at a fair valuation,
23 the sum of the debtor's debts is greater than ~~[all]~~ the sum of
24 the debtor's assets ~~[at a fair valuation]~~.

25 B. A debtor ~~[who]~~ that is generally not paying

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1 [his] the debtor's debts as they become due other than as a
2 result of a bona fide dispute is presumed to be insolvent. The
3 presumption imposes on the party against which the presumption
4 is directed the burden of proving that the nonexistence of
5 insolvency is more probable than its existence.

6 [~~G.~~ ~~A partnership is insolvent under Subsection A~~
7 ~~of this section if the sum of the partnership's debts is~~
8 ~~greater than the aggregate, at a fair valuation, of all of the~~
9 ~~partnership's assets and the sum of the excess of the value of~~
10 ~~each general partner's nonpartnership assets over the partner's~~
11 ~~nonpartnership debts.~~

12 ~~D.]~~ C. Assets under this section do not include
13 property that has been transferred, concealed or removed with
14 intent to hinder, delay or defraud creditors or that has been
15 transferred in a manner making the transfer voidable under the
16 Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act.

17 [~~E.]~~ D. Debts under this section do not include an
18 obligation to the extent it is secured by a valid lien on
19 property of the debtor not included as an asset."

20 SECTION 11. Section 56-10-17 NMSA 1978 (being Laws 1989,
21 Chapter 382, Section 4) is amended to read:

22 "56-10-17. VALUE.--

23 A. Value is given for a transfer or an obligation
24 if, in exchange for the transfer or obligation, property is
25 transferred or an antecedent debt is secured or satisfied, but

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1 value does not include an unperformed promise made otherwise
2 than in the ordinary course of the promisor's business to
3 furnish support to the debtor or another person.

4 B. For the purposes of Paragraph (2) of Subsection
5 A of Section [~~5 and Section 6 of the Uniform Fraudulent~~
6 ~~Transfer Act~~] 56-10-18 and Section 56-10-19 NMSA 1978, a person
7 gives a reasonably equivalent value if the person acquires an
8 interest of the debtor in an asset pursuant to a regularly
9 conducted, noncollusive foreclosure sale or execution of a
10 power of sale for the acquisition or disposition of the
11 interest of the debtor upon default under a mortgage, deed of
12 trust or security agreement.

13 C. A transfer is made for present value if the
14 exchange between the debtor and the transferee is intended by
15 them to be contemporaneous and is in fact substantially
16 contemporaneous."

17 SECTION 12. Section 56-10-18 NMSA 1978 (being Laws 1989,
18 Chapter 382, Section 5) is amended to read:

19 "56-10-18. [~~TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE~~
20 ~~CREDITORS~~] TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT OR
21 FUTURE CREDITOR.--

22 A. A transfer made or obligation incurred by a
23 debtor is [~~fraudulent~~] voidable as to a creditor, whether the
24 creditor's claim arose before or after the transfer was made or
25 the obligation was incurred, if the debtor made the transfer or

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1 incurred the obligation:

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

4 (2) without receiving a reasonably equivalent
5 value in exchange for the transfer or obligation, and the
6 debtor:

7 (a) was engaged or was about to engage
8 in a business or a transaction for which the remaining assets
9 of the debtor were unreasonably small in relation to the
10 business or transaction; or

11 (b) intended to incur, or believed or
12 reasonably should have believed that ~~he~~ the debtor would
13 incur, debts beyond ~~his~~ the debtor's ability to pay as they
14 became due.

15 B. In determining actual intent under Paragraph (1)
16 of Subsection A of this section, consideration may be given,
17 among other factors, to whether:

18 (1) the transfer or obligation was to an
19 insider;

20 (2) the debtor retained possession or control
21 of the property transferred after the transfer;

22 (3) the transfer or obligation was disclosed
23 or concealed;

24 (4) before the transfer was made or obligation
25 was incurred, the debtor has been sued or threatened with suit;

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1 (5) the transfer was of substantially all the
2 debtor's assets;

3 (6) the debtor absconded;

4 (7) the debtor removed or concealed assets;

5 (8) the value of the consideration received by
6 the debtor was reasonably equivalent to the value of the asset
7 transferred or the amount of the obligation incurred;

8 (9) the debtor was insolvent or became
9 insolvent shortly after the transfer was made or the obligation
10 was incurred;

11 (10) the transfer occurred shortly before or
12 shortly after a substantial debt was incurred; and

13 (11) the debtor transferred the essential
14 assets of the business to a lienor who transferred the assets
15 to an insider of the debtor.

16 C. A creditor making a claim for relief under
17 Subsection A of this section has the burden of proving the
18 elements of the claim for relief by a preponderance of the
19 evidence."

20 SECTION 13. Section 56-10-19 NMSA 1978 (being Laws 1989,
21 Chapter 382, Section 6) is amended to read:

22 "56-10-19. [~~TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS]~~
23 TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT CREDITOR.--

24 A. A transfer made or obligation incurred by a
25 debtor is [~~fraudulent~~] voidable as to a creditor whose claim

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1 arose before the transfer was made or the obligation was
2 incurred if the debtor made the transfer or incurred the
3 obligation without receiving a reasonably equivalent value in
4 exchange for the transfer or obligation and the debtor was
5 insolvent at that time or the debtor became insolvent as a
6 result of the transfer or obligation.

7 B. A transfer made by a debtor is [~~fraudulent~~]
8 voidable as to a creditor whose claim arose before the transfer
9 was made if the transfer was made to an insider for an
10 antecedent debt, the debtor was insolvent at that time and the
11 insider had reasonable cause to believe that the debtor was
12 insolvent.

13 C. Subject to Subsection B of Section 56-10-16 NMSA
14 1978, a creditor making a claim for relief under Subsection A
15 or B of this section has the burden of proving the elements of
16 the claim for relief by a preponderance of the evidence."

17 SECTION 14. Section 56-10-20 NMSA 1978 (being Laws 1989,
18 Chapter 382, Section 7) is amended to read:

19 "56-10-20. WHEN TRANSFER IS MADE OR OBLIGATION IS
20 INCURRED.--For the purposes of the Uniform [~~Fraudulent~~
21 ~~Transfer~~] Voidable Transactions Act:

22 A. a transfer is made:

23 (1) with respect to an asset that is real
24 property other than a fixture, but including the interest of a
25 seller or purchaser under a contract for the sale of the asset,

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1 when the transfer is so far perfected that a good-faith
2 purchaser of the asset from the debtor against ~~whom~~ which
3 applicable law permits the transfer to be perfected cannot
4 acquire an interest in the asset that is superior to the
5 interest of the transferee; and

6 (2) with respect to an asset that is not real
7 property or that is a fixture, when the transfer is so far
8 perfected that a creditor on a simple contract cannot acquire a
9 judicial lien otherwise than under the Uniform ~~Fraudulent~~
10 ~~Transfer~~ Voidable Transactions Act that is superior to the
11 interests of the transferee;

12 B. if applicable law permits the transfer to be
13 perfected as provided in Subsection A of this section and the
14 transfer is not so perfected before the commencement of an
15 action for relief under the Uniform ~~Fraudulent Transfer~~
16 Voidable Transactions Act, the transfer is deemed made
17 immediately before the commencement of the action;

18 C. if applicable law does not permit the transfer
19 to be perfected as provided in Subsection A of this section,
20 the transfer is made when it becomes effective between the
21 debtor and the transferee;

22 D. a transfer is not made until the debtor has
23 acquired rights in the asset transferred; and

24 E. an obligation is incurred:

25 (1) if oral, when it becomes effective between

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1 the parties; or

2 (2) if evidenced by a ~~[writing]~~ record, when
3 the ~~[writing-executed]~~ record signed by the obligor is
4 delivered to or for the benefit of the obligee."

5 SECTION 15. Section 56-10-21 NMSA 1978 (being Laws 1989,
6 Chapter 382, Section 8) is amended to read:

7 "56-10-21. REMEDIES OF ~~[CREDITORS]~~ CREDITOR.--

8 A. In an action for relief against a transfer or
9 obligation under the Uniform ~~[Fraudulent Transfer]~~ Voidable
10 Transactions Act, a creditor, subject to the limitations in
11 Section ~~[9 of that act]~~ 56-10-22 NMSA 1978, may obtain:

12 (1) avoidance of the transfer or obligation to
13 the extent necessary to satisfy the creditor's claim;

14 (2) an attachment or other provisional remedy
15 against the asset transferred or other property of the
16 transferee ~~[in accordance with procedures prescribed by law;~~
17 ~~or]~~ if available under applicable law; and

18 (3) subject to applicable principles of equity
19 and in accordance with applicable rules of civil procedure:

20 (a) an injunction against further
21 disposition by the debtor or a transferee, or both, of the
22 asset transferred or of other property;

23 (b) appointment of a receiver to take
24 charge of the asset transferred or of other property of the
25 transferee; or

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1 (c) any other relief the circumstances
2 may require.

3 B. If a creditor has obtained a judgment on a claim
4 against the debtor, the creditor, if the court so orders, may
5 levy execution on the asset transferred or its proceeds."

6 SECTION 16. Section 56-10-22 NMSA 1978 (being Laws 1989,
7 Chapter 382, Section 9) is amended to read:

8 "56-10-22. DEFENSES, LIABILITY AND PROTECTION OF
9 TRANSFEREE OR OBLIGEE.--

10 A. A transfer or obligation is not voidable under
11 Paragraph (1) of Subsection A of Section [~~5 of the Uniform~~
12 ~~Fraudulent Transfer Act~~] 56-10-18 NMSA 1978 against a person
13 [~~who~~] that took in good faith and for a reasonably equivalent
14 value given the debtor or against any subsequent transferee or
15 obligee.

16 B. To the extent a transfer is avoidable in an
17 action by a creditor under Paragraph (1) of Subsection A of
18 Section 56-10-21 NMSA 1978:

19 (1) except as otherwise provided in this
20 section [~~to the extent a transfer is avoidable in an action by~~
21 ~~a creditor under Paragraph (1) of Subsection A of Section 8 of~~
22 ~~that act~~], the creditor may recover judgment for the value of
23 the asset transferred, as adjusted under Subsection C of this
24 section, or the amount necessary to satisfy the creditor's
25 claim, whichever is less. The judgment may be entered against:

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1 [~~(1)~~] (a) the first transferee of the
2 asset or the person for whose benefit the transfer was made; or

3 [~~(2)~~ ~~any subsequent transferee other than a~~
4 ~~good-faith transferee who took for value or from any subsequent~~
5 ~~transferee]~~

6 (b) an immediate or mediate transferee
7 of the first transferee, other than: 1) a good-faith
8 transferee that took for value; or 2) an immediate or mediate
9 good-faith transferee of a person described in Item 1) of this
10 subparagraph; and

11 (2) recovery pursuant to Paragraph (1) of
12 Subsection A or Subsection B of Section 56-10-21 NMSA 1978 of
13 or from the asset transferred or its proceeds, by levy or
14 otherwise, is available only against a person described in
15 Subparagraph (a) or (b) of Paragraph (1) of this subsection.

16 C. If the judgment under Subsection B of this
17 section is based upon the value of the asset transferred, the
18 judgment must be for an amount equal to the value of the asset
19 at the time of the transfer, subject to adjustment as the
20 equities may require.

21 D. Notwithstanding voidability of a transfer or an
22 obligation under the Uniform [~~Fraudulent Transfer~~] Voidable
23 Transactions Act, a good-faith transferee or obligee is
24 entitled, to the extent of the value given the debtor for the
25 transfer or obligation, to:

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1 (1) a lien on or a right to retain [~~any~~] an
2 interest in the asset transferred;

3 (2) enforcement of [~~any~~] an obligation
4 incurred; or

5 (3) a reduction in the amount of the liability
6 on the judgment.

7 E. A transfer is not voidable under Paragraph (2)
8 of Subsection A of Section [~~5 or Section 6 of the Uniform~~
9 ~~Fraudulent Transfer Act~~] 56-10-18 NMSA 1978 or under Section
10 56-10-19 NMSA 1978 if the transfer results from:

11 (1) termination of a lease upon default by the
12 debtor when the termination is pursuant to the lease and
13 applicable law; or

14 (2) enforcement of a security interest in
15 compliance with Chapter 55, Article 9 NMSA 1978, other than
16 acceptance of collateral in full or partial satisfaction of the
17 obligation it secures.

18 F. A transfer is not voidable under Subsection B of
19 Section [~~6 of the Uniform Fraudulent Transfer Act~~] 56-10-19
20 NMSA 1978:

21 (1) to the extent the insider gave new value
22 to or for the benefit of the debtor after the transfer was
23 made, [~~unless~~] except to the extent the new value was secured
24 by a valid lien;

25 (2) if made in the ordinary course of business

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1 or financial affairs of the debtor and the insider; or

2 (3) if made pursuant to a good-faith effort to
3 rehabilitate the debtor and the transfer secured present value
4 given for that purpose as well as an antecedent debt of the
5 debtor.

6 G. In determining the burden of proving matters
7 referred to in this section:

8 (1) a party that seeks to invoke Subsection A,
9 D, E or F of this section has the burden of proving the
10 applicability of that subsection;

11 (2) except as otherwise provided in Paragraphs
12 (3) and (4) of this subsection, the creditor has the burden of
13 proving each applicable element of Subsection B or C of this
14 section;

15 (3) the transferee has the burden of proving
16 the applicability to the transferee of Item 1) or 2) of
17 Subparagraph (b) of Paragraph (1) of Subsection B of this
18 section; and

19 (4) a party that seeks adjustment under
20 Subsection C of this section has the burden of proving the
21 adjustment.

22 H. The standard of proof required to establish
23 matters referred to in this section is preponderance of the
24 evidence."

25 SECTION 17. Section 56-10-23 NMSA 1978 (being Laws 1989,

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1 Chapter 382, Section 10) is amended to read:

2 "56-10-23. EXTINGUISHMENT OF ~~[CAUSE OF ACTION]~~ CLAIM FOR
3 RELIEF.--A ~~[cause of action]~~ claim for relief with respect to a
4 ~~[fraudulent]~~ transfer or obligation under the Uniform
5 ~~[Fraudulent Transfer]~~ Voidable Transactions Act is extinguished
6 unless action is brought:

7 A. under Paragraph (1) of Subsection A of Section
8 ~~[5 of the Uniform Fraudulent Transfer Act within]~~ 56-10-18 NMSA
9 1978 not later than four years after the transfer was made or
10 the obligation was incurred or, if later, ~~[within]~~ not later
11 than one year after the transfer or obligation was or could
12 reasonably have been discovered by the claimant;

13 B. under Paragraph (2) of Subsection A of Section
14 ~~[5]~~ 56-10-18 NMSA 1978 or Subsection A of Section ~~[6 of that~~
15 ~~act within]~~ 56-10-19 NMSA 1978 not later than four years after
16 the transfer was made or the obligation was incurred; or

17 C. under Subsection B of Section ~~[6 of that act~~
18 ~~within]~~ 56-10-19 NMSA 1978 not later than one year after the
19 transfer was made ~~[or the obligation was incurred]."~~

20 **SECTION 18.** Section 56-10-24 NMSA 1978 (being Laws 1989,
21 Chapter 382, Section 11) is recompiled as Section 56-10-26 NMSA
22 1978 and is amended to read:

23 "56-10-26. SUPPLEMENTARY PROVISIONS.--Unless displaced by
24 the provisions of the Uniform ~~[Fraudulent Transfer]~~ Voidable
25 Transactions Act, the principles of law and equity, including

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1 the law merchant and the law relating to principal and agent,
2 estoppel, laches, fraud, misrepresentation, duress, coercion,
3 mistake, insolvency or other validating or invalidating cause,
4 supplement its provisions."

5 SECTION 19. A new section of the Uniform Voidable
6 Transactions Act, Section 56-10-24 NMSA 1978, is enacted to
7 read:

8 "56-10-24. [NEW MATERIAL] GOVERNING LAW.--

9 A. In this section, in determining a debtor's
10 location, a debtor:

11 (1) who is an individual is located at the
12 individual's principal residence;

13 (2) that is an organization and has only one
14 place of business is located at its place of business; and

15 (3) that is an organization and has more than
16 one place of business is located at its chief executive office.

17 B. A claim for relief in the nature of a claim for
18 relief under the Uniform Voidable Transactions Act is governed
19 by the local law of the jurisdiction in which the debtor is
20 located when the transfer is made or the obligation is
21 incurred."

22 SECTION 20. Section 56-10-25 NMSA 1978 (being Laws 1989,
23 Chapter 382, Section 12) is recompiled as Section 56-10-27 NMSA
24 1978 and is amended to read:

25 "56-10-27. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--

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1 The Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act
2 shall be applied and construed to effectuate its general
3 purpose to make uniform the law with respect to the subject of
4 the Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act
5 among states enacting it."

6 SECTION 21. A new section of the Uniform Voidable
7 Transactions Act, Section 56-10-25 NMSA 1978, is enacted to
8 read:

9 "56-10-25. [NEW MATERIAL] APPLICATION TO SERIES
10 ORGANIZATION.--

11 A. As used in this section:

12 (1) "protected series" means an arrangement,
13 however denominated, created by a series organization that,
14 pursuant to the law under which the series organization is
15 organized, has the characteristics set forth in Paragraph (2)
16 of this subsection; and

17 (2) "series organization" means an
18 organization that, pursuant to the law under which it is
19 organized, has the following characteristics:

20 (a) the organic record of the
21 organization provides for creation by the organization of one
22 or more protected series, however denominated, with respect to
23 specified property of the organization, and for records to be
24 maintained for each protected series that identify the property
25 of or associated with the protected series;

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1 (b) debt incurred or existing with
2 respect to the activities of, or property of or associated
3 with, a particular protected series is enforceable against the
4 property of or associated with the protected series only, and
5 not against the property of or associated with the organization
6 or other protected series of the organization; and

7 (c) debt incurred or existing with
8 respect to the activities or property of the organization is
9 enforceable against the property of the organization only, and
10 not against the property of or associated with a protected
11 series of the organization.

12 B. A series organization and each protected series
13 of the organization is a separate person for purposes of the
14 Uniform Voidable Transactions Act, even if for other purposes a
15 protected series is not a person separate from the organization
16 or other protected series of the organization."

17 SECTION 22. A new section of the Uniform Voidable
18 Transactions Act, Section 56-10-28 NMSA 1978, is enacted to
19 read:

20 "56-10-28. [NEW MATERIAL] RELATION TO ELECTRONIC
21 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform
22 Voidable Transactions Act modifies, limits or supersedes the
23 Electronic Signatures in Global and National Commerce Act, 15
24 U.S.C. Section 7001 et seq., but does not modify, limit or
25 supersede Section 101(c) of that act, 15 U.S.C. Section

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1 7001(c), or authorize electronic delivery of any of the notices
2 described in Section 103(b) of that act, 15 U.S.C. Section
3 7003(b)."

4 SECTION 23. A new section of the Uniform Voidable
5 Transactions Act, Section 56-10-29 NMSA 1978, is enacted to
6 read:

7 "56-10-29. [NEW MATERIAL] APPLICABILITY.--

8 A. The provisions of this act:
9 (1) apply to a transfer made or obligation
10 incurred on or after January 1, 2016; but

11 (2) do not apply to:
12 (a) a transfer made or an obligation
13 incurred before January 1, 2016; or

14 (b) a right of action that has accrued
15 before January 1, 2016.

16 B. For the purposes of Subsection A of this
17 section, a transfer is made and an obligation is incurred at
18 the time provided in Section 56-10-20 NMSA 1978."

19 SECTION 24. EFFECTIVE DATE.--

20 A. The effective date of the provisions of Sections
21 1 through 7 of this act is July 1, 2015.

22 B. The effective date of the provisions of Sections
23 8 through 23 of this act is January 1, 2016.