

TITLE 11 - BANKRUPTCY
CHAPTER 5 - CREDITORS, THE DEBTOR, AND THE ESTATE
SUBCHAPTER III - THE ESTATE

§ 548. Fraudulent transfers and obligations

- (a) (1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
- (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
 - (B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
 - (ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
 - (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
 - (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
 - (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.
- (2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—
- (A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or
 - (B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.
- (b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.
- (c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.
- (d) (1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in

such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section—

(A) “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant or financial participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment;

(D) a swap participant or financial participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer; and

(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.

(3) In this section, the term “charitable contribution” means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—

(A) is made by a natural person; and

(B) consists of—

(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or

(ii) cash.

(4) In this section, the term “qualified religious or charitable entity or organization” means—

(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or

(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

(e) (1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

(A) such transfer was made to a self-settled trust or similar device;

(B) such transfer was by the debtor;

(C) the debtor is a beneficiary of such trust or similar device; and

(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of

1934 (15 U.S.C. 78l and 78o (d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2600; Pub. L. 97–222, § 5, July 27, 1982, 96 Stat. 236; Pub. L. 98–353, title III, §§ 394, 463, July 10, 1984, 98 Stat. 365, 378; Pub. L. 99–554, title II, § 283(n), Oct. 27, 1986, 100 Stat. 3117; Pub. L. 101–311, title I, § 104, title II, § 204, June 25, 1990, 104 Stat. 268, 269; Pub. L. 103–394, title V, § 501(b)(5), Oct. 22, 1994, 108 Stat. 4142; Pub. L. 105–183, §§ 2, 3 (a), June 19, 1998, 112 Stat. 517; Pub. L. 109–8, title IX, § 907(f), (o)(4)–(6), title XIV, § 1402, Apr. 20, 2005, 119 Stat. 177, 182, 214.)

Historical and Revision Notes

legislative statements

Section 548 (d)(2) is modified to reflect general application of a provision contained in section 766 of the Senate amendment with respect to commodity brokers. In particular, section 548(d)(2)(B) of the House amendment makes clear that a commodity broker who receives a margin payment is considered to receive the margin payment in return for “value” for purposes of section 548.

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).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 3, 2007 (see <http://www.law.cornell.edu/uscode/uscp.html>).

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.