

By the Committee on Commerce and Economic Opportunities; and  
Senator Bronson

310-1878-99

1                                   A bill to be entitled  
2           An act relating to fraudulent transfers;  
3           amending s. 726.105, F.S.; providing that  
4           certain transfers made by a debtor are  
5           fraudulent for failure to notify unsecured  
6           creditors; creating s. 726.202, F.S.;  
7           prescribing conditions under which debtor  
8           transfers will be deemed fraudulent for failure  
9           to provide notice; prescribing the form and  
10          timing of such notice; providing an exemption;  
11          creating s. 726.203, F.S.; providing for  
12          personal liability of affiliates and insiders  
13          who participate in fraudulent transfers;  
14          providing for costs and attorney's fees;  
15          providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19           Section 1. Subsection (1) of section 726.105, Florida  
20 Statutes, is amended to read:

21           726.105 Transfers fraudulent as to present and future  
22 creditors.--

23           (1) A transfer made or obligation incurred by a debtor  
24 is fraudulent as to a creditor, whether the creditor's claim  
25 arose before or after the transfer was made or the obligation  
26 was incurred, if the debtor made the transfer or incurred the  
27 obligation:

28           (a) With actual intent to hinder, delay, or defraud  
29 any creditor of the debtor; ~~or~~

30           (b) Without receiving a reasonably equivalent value in  
31 exchange for the transfer or obligation, and the debtor:

1           1. Was engaged or was about to engage in a business or  
2 a transaction for which the remaining assets of the debtor  
3 were unreasonably small in relation to the business or  
4 transaction; or

5           2. Intended to incur, or believed or reasonably should  
6 have believed that he or she would incur, debts beyond his or  
7 her ability to pay as they became due; ~~or~~

8           (c) Without giving the notice to unsecured creditors  
9 required by s. 726.202.

10           Section 2. Section 726.202, Florida Statutes, is  
11 created to read:

12           726.202 Notice to unsecured creditors.--

13           (1) Any debtor who transfers 51 percent or more of the  
14 fair market value of the assets, supplies, inventory,  
15 merchandise, materials, or other property held by such debtor,  
16 not in the ordinary course of the debtor's business, commits a  
17 fraudulent transfer if such debtor fails to provide actual  
18 notice of the proposed transfer to the debtor's unsecured  
19 creditors, by personal delivery or certified mail, and by  
20 publication in a local paper, not less than 15 days prior to  
21 the effective date of the transfer.

22           (2) Any debtor who has provided a security agreement  
23 to its creditors pursuant to the provisions of chapter 679 is  
24 exempt from the notice requirements under subsection (1) as to  
25 such creditors.

26           Section 3. Section 726.203, Florida Statutes, is  
27 created to read:

28           726.203 Liability of affiliates and insiders.--Any  
29 affiliate or insider who knowingly participates, either  
30 directly or indirectly, in a fraudulent transfer under s.  
31 726.105 is personally liable to any secured or unsecured

1 creditor for the full amount of such secured or unsecured  
2 creditor's claim, including the cost and attorney's fees  
3 incurred by such secured or unsecured creditor in perfecting  
4 such claim.

5 Section 4. This act shall take effect October 1, 1999.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8 COMMITTEE SUBSTITUTE FOR  
9 Senate Bill 1042

10 Amends Florida's Uniform Fraudulent Transfer Act rather than  
11 creating a specific statutory provision governing bulk sales.

12 Specifies that the debtor's sale of 51 percent or more of the  
13 fair market value of assets, inventory, supplies, merchandise,  
14 materials, or other property, not sold in the ordinary course  
of the seller's business, is a fraudulent transfer pursuant to  
ch. 726, F.S., unless the seller gives unsecured creditors  
notice of the proposed transfer.

15 Provides specific procedures for notice, requiring that such  
16 notice be given 15 days prior to the proposed transfer and  
17 mandating that such notice be given by personal delivery or  
certified mail, and by publication in a local paper.

18 Exempts debtors who have provided creditors with a security  
agreement pursuant to ch. 679, Florida's UCC Article 9.

19 Provides that affiliates or insiders who knowingly participate  
20 in a fraudulent transfer are personally liable to secured and  
unsecured creditors alike. Includes provisions for the  
21 recovery of costs and attorney's fees relating to the claim.