

By the Committee on Business Regulation & Consumer Affairs  
and Representative Minton

1                                   A bill to be entitled  
2           An act relating to bulk sales; amending s.  
3           726.105, F.S.; specifying certain transfers or  
4           incurred obligations as fraudulent absent  
5           notice to unsecured creditors; creating s.  
6           726.202, F.S.; specifying certain transfers as  
7           fraudulent absent actual notice to unsecured  
8           creditors; providing notice criteria; providing  
9           an exemption; creating s. 726.203, F.S.;  
10          providing for liability of affiliates or  
11          insiders under certain circumstances; including  
12          costs and attorney's fees; providing an  
13          effective date.

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

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

19           726.105 Transfers fraudulent as to present and future  
20 creditors.--

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

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

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

30           1. Was engaged or was about to engage in a business or  
31 a transaction for which the remaining assets of the debtor

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 were unreasonably small in relation to the business or  
2 transaction; or

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

6 (c) Without giving the notice to unsecured creditors  
7 required by s. 726.202.

8 Section 2. Section 726.202, Florida Statutes, is  
9 created to read:

10 726.202 Notice to unsecured creditors.--

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

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

24 Section 3. Section 726.203, Florida Statutes, is  
25 created to read:

26 726.203 Liability of affiliates and insiders.--

27 Any affiliate or insider who knowingly participates,  
28 either directly or indirectly, in a fraudulent transfer under  
29 s. 726.105 shall be personally liable to any secured or  
30 unsecured creditor for the full amount of such secured or  
31 unsecured creditor's claim, including the cost and attorney's

1 fees incurred by such secured or unsecured creditor in  
2 perfecting such claim.

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