



DELBERT HOSEMANN
Secretary of State

2014 Voidable Transactions Act Study Group Minutes

August 7, 2014

This meeting of the Voidable Transactions Act Study Group (hereinafter the “Study Group”) was called to order on Thursday, August 7, 2014 at 11:05 A.M. at the Office of the Secretary of State, 125 South Congress Street, Jackson, Mississippi. A list of attendees is included as Attachment A.

Welcome: Drew Snyder, Assistant Secretary of State of Policy and Research, reviewed handout materials including the agenda (Attachment B), a memo based on the prefatory note on page 5 and 6 of the ULC Approved Act (Attachment C), a discussion draft (Attachment D) and a feedback form (Attachment E). Secretary Hosemann thanked the Study Group for their service. He explained the study group process and the importance of laws that foster a favorable business climate.

Expert Presentation: Edwin Smith and Professor Kenneth Kettering addressed the Study Group by phone. Mr. Smith and Professor Kettering provided a summary of the fraudulent transfer laws, discussed recent technical amendments promulgated by the ULC, and answered questions.

Discussion: The Study Group reviewed the 2014 amendments to the Uniform Fraudulent Transfer Act (now called the Uniform Voidable Transactions Act), discussed non-uniform amendments in Mississippi law, and debated fraudulent transfer liability with respect to charitable donees.

Takeaways: The Study Group endorsed three amendments to Mississippi’s Uniform Fraudulent Transfer Act: (1) deleting the special definition of insolvency for partnerships; (2) adding a new section addressing series organizations; and (3) adopting medium neutrality edits. A series organization section allows Mississippi to be proactive and address out-of-state series organizations operating in state.

The Study Group agreed more information is needed on (1) the unique features of Mississippi’s Fraudulent Transfer Act and the rationale behind them; (2) insulating charitable donees from fraudulent transfer liability; (3) the new choice of law section in the Voidable Transactions Act; (4) defenses; (5) the name change; and (6) burdens of proof. Overall, the Study Group favors a choice of law section, and asked for a written explanation on the distinctions between the choice of law provisions under the UCC and the proposed UVTA. With respect to defenses, the Study Group was receptive to the proposed changes, but members suggested looking into whether the proposed language on strict foreclosure conforms to existing law. The issues on name change and burdens of proof will be addressed after the group has the opportunity to evaluate the unique features of the existing fraudulent transfer law. Professor Czarnetzky volunteered to investigate the charities issue, and Rod Clement volunteered to look into the strict foreclosure language.

Closing: Mr. Snyder thanked everyone for their participation and said Study Group members would be receiving additional information on the agreed upon items. The meeting was adjourned at 1:00 P.M.

EXHIBIT A

**Minutes of the Voidable Transactions Study Group,
Meeting # 1**

August 7, 2014

Members in Attendance:

1. Jeff Barber
2. Rod Clement
3. John Czarnetzky
4. John Flynt
5. Mark Franklin
6. Sterling Kidd
7. James McCullough
8. Jane Morgan
9. Ben Sones
10. Roger Williams
11. Jack Wilson
12. Marcus Wilson

Members in Attendance by Telephone:

1. Bill Leech
2. Will Wilkins

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Doug Davis, Chief-of-Staff
3. Nathan Upchurch, Legislative Liaison
4. Drew Snyder, Assistant Secretary of State, Division of Policy and Research
5. Leann Thompson, Staff Attorney, Division of Policy and Research
6. Bee McNamara, Special Assistant to Secretary of State

EXHIBIT B

Secretary of State Business Law Reform Study Groups Voidable Transactions Act Study Group

Mississippi Secretary of State's Office
125 S. Congress Street
17th Floor
Jackson, Mississippi

Thursday, August 7, 2014
11:00 a.m. CT
1-866-405-4106 | Passcode: 3129150195

AGENDA

1. Welcome and Opening Remarks
2. Discussion of 2014 Amendments to Uniform Law Commission's Drafting Committee on Amendments to Uniform Voidable Transactions Act (Formerly Uniform Fraudulent Transfer Act)
Edwin E. Smith, Bingham McCutchen, Chair, ULC Drafting Committee on Amendments to UVTA
Professor Kenneth C. Kettering, Reporter, ULC Drafting Committee on Amendments to UVTA
Lindsay Beaver, Legislative Counsel, ULC
3. Study Group Member Discussion
4. Review of Work Plan and Next Steps
5. Other Business
6. Adjourn

Handouts

Memo to Study Group Members re Amendments to Mississippi's Uniform Fraudulent Transfer Act
Uniform Voidable Transactions Act Post Annual Meeting Act with Comments [Uniform Law
Commission]
Discussion Draft of Amendments to Miss. Code Ann. 15-3-101 et seq.
Voting Form

EXHIBIT C

MEMORANDUM

To: Voidable Transactions Study Group
From: Policy & Research Division
Date: August 5, 2014
Re: Potential Amendments to Mississippi's Uniform Fraudulent Transfer Act

The Uniform Fraudulent Transfer Act (Miss. Code Ann. § 15-3-101 et seq.) provides a creditor with the means to reach assets a debtor has transferred to another person to keep them from being used to satisfy a debt.

The Uniform Fraudulent Transfer Act was approved in 1984 by the Uniform Law Commission, a group of volunteer attorneys selected by the Governors and legislative leaders of their states to draft model state laws. The Uniform Fraudulent Transfer Act was the successor act to the Uniform Fraudulent Conveyance Act, a codification of certain decisions applying the Statute of 13 Elizabeth.¹ The Uniform Fraudulent Transfer Act preserved the basic structure and approach of the Uniform Fraudulent Conveyance Act, with adjustments to conform to the (then) recent federal Bankruptcy Code as well as changes within the Uniform Commercial Code.

According to the Uniform Law Commission, 43 states and the District of Columbia have enacted the Uniform Fraudulent Transfer Act or substantially similar law.² Mississippi adopted the Uniform Fraudulent Transfer Act in 2006.³ The Mississippi version deviates slightly from the Uniform Act. Under Mississippi's Uniform Fraudulent Transfer Act, traditional evidence of "constructive fraud" is found to create a strong presumption of actual fraud that can only be rebutted by clear and convincing evidence.⁴ In the Uniform Act, "actual fraud" and "constructive fraud" are assessed separately.

In July 2014, the Uniform Law Commission approved a set of amendments to the Uniform Fraudulent Transfer Act. The amendments changed the title of the Act to the Uniform Voidable Transactions Act. The amendment project was instituted to address a small number of narrowly-defined issues, and was not a comprehensive revision. Several features of the ULC amendments are provided here.

1. Name Change. The act has been renamed The Uniform Voidable Transactions Act. The retitling of the Act is not intended to change its meaning. Rather, the word "Fraudulent" in

¹ See http://www.uniformlaws.org/shared/docs/Fraudulent%20Transfer/2014AM_auvta_draft.pdf

² See [uniformlaws.org](http://www.uniformlaws.org)

³ S.B. 2781 (2006), available at <http://billstatus.ls.state.ms.us/documents/2006/pdf/SB/2700-2799/SB2781SG.pdf>

⁴ See Miss. Code Ann. 15-3-107; see also Barber, Jeffrey R. Mississippi Enacts New Fraudulent Transfer Act, available at <http://mississippimedicalnews.com/mississippi-enacts-new-fraudulent-transfer-act-cms-585>

the original title, though sanctioned by historical usage, is considered to be a misleading description of the Act as it was originally written. Fraud is not, and never has been, a necessary element of a claim under the Act. The misleading intimation to the contrary in the original title of the Act led to confusion in the court. The misleading insistence on “fraud” in the original title also contributed to the evolution of widely-used shorthand terminology that further tends to distort understanding of the provisions of the Act. Thus, several theories of recovery under the Act that have nothing whatever to do with fraud (or with intent of any sort) came to be widely known by the oxymoronic and confusing shorthand constructive fraud. Likewise, the primordial theory of recovery under the Act came to be widely known by the shorthand tag “actual fraud.” That shorthand is misleading, because that provision does not in fact require proof of fraudulent intent.⁵ In addition, the word “Transfer” in the original title of the Act was underinclusive, because the Act applies to incurrence of obligations as well as to transfers of property.

As originally written, the Uniform Fraudulent Transfer Act inconsistently used different words to denote a transfer or obligation for which the Act provides a remedy: sometimes “voidable”, and sometimes “fraudulent”. The amendments resolve that inconsistency by using “voidable” consistently or deleting the word as unnecessary. No change in meaning is intended.

2. Choice of Law. The amendments create a new section, which sets forth a choice of law rule for claims of the nature governed by the act. The law that will apply will be that of the debtor’s residence, not where the debtor might have traveled to or been temporarily staying when the challenged transaction occurred. If the debtor is a business, then the applicable law will be from the jurisdiction where the business is conducting business or, if the business is in multiple jurisdictions, where the business is headquartered.

The time for making the determination as to the individual debtor’s residence, or the organizational debtor’s place of business or headquarters, is the time when the transfer occurs. The provision keeps a debtor from, for instance, making a transfer in State A then promptly moving to State B to try to take advantage of its more favorable laws.

This new choice of laws rule brings the Uniform Voidable Transactions Act into line with § 9-301 of the Uniform Commercial Code (UCC), which provides that the priority of liens for intangible property is determined by the local law where the debtor is located. The idea here is to prevent debtors from attempting to game the system by feigning a move to another jurisdiction.⁶

3. Evidentiary Matters. The uniform amendments would require new §§ 15-3-107(c), 15-3-113(7) and 15-13-113(8) to add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act.

⁵ See Section 4, Comment 8

⁶ See Adkisson, Jay, Forbes. The Uniform Voidable Transactions Act and Conflict of Laws, available at <http://www.forbes.com/sites/jayadkisson/2014/07/22/the-uniform-voidable-transactions-act-and-conflict-of-laws/2/>

4. Deletion of Special Definition of “Insolvency for Partnerships”. Section 2(c) of the Act (Miss Code § 15-3-103) as originally adopted set forth a special definition of “insolvency” applicable to partnerships. The ULC amendments would delete original § 15-3-103(c), with the result that the general definition of “insolvency” now applies to partnerships. One reason given for this change is that original § 15-3-103(c) gave a partnership full credit for the net worth of each of its general partners. According to the drafters, giving a partnership full credit for the net worth of each of its general partners makes sense only if each general partner is liable for all debts of the partnership, but such is not necessarily the case under modern partnership statutes. A more fundamental reason is that the general definition of “insolvency” in § 15-3-103(a) does not credit a non-partnership debtor with any part of the net worth of its guarantors. To the extent that a general partner is liable for the debts of the partnership, that liability is analogous to that of a guarantor. The drafting committee contends there is “no good reason to define ‘insolvency’ differently for a partnership debtor than for a non-partnership debtor whose debts are guaranteed by contract.”⁷

5. Defenses. The amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee, as follows:

(1) As originally written, § 15-3-113(1) created a complete defense to an action under § 15-3-107(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments would add to § 15-3-113(1) the further requirement that the reasonably equivalent value must be given the debtor.

(2) Section 15-3-113(2), derived from Bankruptcy Code §§ 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such a person. The amendments clarify the meaning of § 15-3-113(2) by rewording it to follow more closely the wording of Bankruptcy Code §§ 550(a), (b) (which is substantially unchanged as of 2014). Among other things, the uniform act amendments aim to make clear that the defense applies to recovery of or from the transferred property or its proceeds, by levy or otherwise, as well as to an action for a money judgment.

(3) Section 15-3-113(5)(b) as originally written and adopted created a defense to an action under parts of the act to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The proposed amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligations it secures a remedy sometimes referred to as “strict foreclosure”. An exemption for strict foreclosure “is inappropriate because compliance with the rules of Article 9 relating to

⁷ See UVTA Prefatory Note, p. 5, available at

http://www.uniformlaws.org/shared/docs/Fraudulent%20Transfer/2014AM_auvta_draft.pdf

strict foreclosure may not sufficiently protect the interests of the debtor's other creditors if the debtor does not act to protect equity the debtor may have in the asset."⁸

6. Series Organizations: A new section of the Act provides that each "protected series" of a "series organization" is to be treated as a person for purposes of the Act, even if it is not treated as a person for other purposes. This change responds to the emergence of the "series organization" as a significant form of business organization. *See, e.g.*, Del. Code Ann., tit. 6, Section 18-215 (2012) (pertaining to Delaware limited liability companies). If the statute under which an organization is organized permits it to divide its assets and debts among "protected series", such that assets and debts of, or associated with, each "protected series" are separated in accordance with subsections (a)(2)(ii) and (iii), and if the organization does so, then the provisions of this Act apply to each "protected series" as if were a legal entity, regardless of whether it is considered to be a legal entity for other purposes.

7. Medium Neutrality. In order to accommodate modern technology, the references in the Act to a "writing" have been replaced with "record," and related changes made.

⁸ *Id.*

EXHIBIT D
DISCUSSION DRAFT

For August 7, 2014 Study Group Meeting

POTENTIAL CHANGES TO UNIFORM FRAUDULENT TRANSFER ACT (15-3-101 et seq.)

AN ACT TO AMEND SECTION 15-3-101, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO AMEND SECTION 15-3-103, MISSISSIPPI CODE OF 1972, TO DELETE SPECIAL DEFINITION OF INSOLVENCY FOR PARTNERSHIPS; TO BRING FORWARD SECTION 15-3-105, MISSISSIPPI CODE OF 1972, WHICH SPECIFIES VALUE UNDER THE ACT, FOR PURPOSES OF POSSIBLE AMENDMENT; TO AMEND SECTION 15-3-107, MISSISSIPPI CODE OF 1972, TO CLARIFY APPLICABLE BURDEN OF PROOF UNDER THE ACT; TO AMEND SECTION 15-3-109, MISSISSIPPI CODE OF 1972, TO SPECIFY WHEN A TRANSFER IS MADE OR OBLIGATION OCCURRED; TO AMEND SECTION 15-3-111, MISSISSIPPI CODE OF 1972, TO PROVIDE A CREDITOR WITH PREJUDGMENT REMEDIES IF AVAILABLE UNDER APPLICABLE LAW; TO AMEND SECTION 15-3-113, MISSISSIPPI CODE OF 1972, TO CLARIFY DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREES OR OBLIGEEES; TO AMEND SECTION 15-3-115, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE EXTINGUISHMENT OF A CAUSE OF ACTION; TO CREATE NEW SECTION TO SET FORTH A CHOICE OF LAW RULE FOR CLAIMS OF THE NATURE GOVERNED BY THE ACT; TO CREATE NEW SECTION TO PROVIDE THAT EACH PROTECTED SERIES OF A SERIES ORGANIZATION IS TO BE TREATED AS A PERSON FOR PURPOSES OF THE ACT; TO AMEND SECTIONS 15-3-121, MISSISSIPPI CODE OF 1972, TO CHANGE SHORT TITLE; TO AMEND SECTIONS 11-5-75 AND 91-9-707, IN CONFORMITY TO PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

SECTION 1. Section 15-3-101, Mississippi Code of 1972, is amended as follows:

15-3-101. Definitions. The following words and phrases shall have the meanings ascribed herein, unless the context clearly indicates otherwise:

(a) "Affiliate" means:

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

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

(ii) A corporation twenty percent (20%) 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 (20%) or more of the outstanding voting securities of the debtor, other than a person who that holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) 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

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

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

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

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

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

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

(d) "Creditor" means a person who has a claim.

(e) "Debt" means liability on a claim.

(f) "Debtor" means a person who that is liable on a claim.

(g) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) (h) "Insider" includes:

(i) If the debtor is an individual,

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;
3. A general partner in a partnership described in clause 2; or
4. A corporation of which the debtor is a director, officer or person in control;

(ii) If the debtor is a corporation,

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership described in clause 4; or
6. A relative of a general partner, director, officer or person in control of the debtor;

(iii) If the debtor is a partnership,

1. A general partner in the debtor;
2. A relative of a general partner in, or a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership described in clause 3; or
5. A person in control of the debtor;

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

(v) A managing agent of the debtor.

(h) (i) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(j) “Organization” means a person other than an individual.

(i) (k) “Person” means an individual, partnership, corporation, association, organization, estate, business or nonprofit entity, public corporation, government or governmental subdivision, or agency, or instrumentality, business trust, estate, trust or any other legal or commercial entity.

(j) (l) "Property" means anything that may be the subject of ownership.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(o) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(l) (p) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

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

SECTION 2. Section 15-3-103, Mississippi Code of 1972, is amended as follows:

§ 15-3-103. Insolvency. (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than all the sum of the debtor's assets, at a fair valuation.

(2) A debtor who that generally is not paying his or her the debtor's debts as they become due other than as a result of a bona fine dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) A partnership is insolvent under subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) (3) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this article.

(5) (4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

SECTION 3. Section 15-3-105, Mississippi Code of 1972, is brought forward as follows:

§ 15-3-105. When value given. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of Section 15-3-107(2)(l),(m) and (n), a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

SECTION 4. Section 15-3-107, Mississippi Code of 1972, is amended as follows:

§ 15-3-107. Fraudulent transfers and obligations; intent; presumptions. Transfer or Obligation Voidable as to Present or Future Creditor. (1) A transfer made or obligation incurred by a debtor is fraudulent voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud any creditor of the debtor.

(2) In determining actual intent under subsection (1), consideration may be given, among other factors, to whether:

- (a) The transfer or obligation was to an insider;
- (b) The debtor retained possession or control of the property transferred after the transfer;
- (c) The transfer or obligation was disclosed or concealed;
- (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (e) The transfer was of substantially all the debtor's assets;
- (f) The debtor absconded;
- (g) The debtor removed or concealed assets;
- (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred;

(k) The debtor transferred the essential assets of the business to a lienor who that transferred the assets to an insider of the debtor;

(l) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

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

(ii) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due;

(m) A transfer made or obligation incurred by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation; and

(n) A transfer made by a debtor may be fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) If there exists a combination of facts such as described in subsection (2)(1), (m) or (n) only, then there will be a strong presumption of fraud which can be rebutted only by clear and convincing evidence.

(4) Except as provided in subsection (3), a creditor making a claim under subsection (1) has the burden of proving the elements of the claim by a preponderance of the evidence.

SECTION 5. Reserved.

SECTION 6. Section 15-3-109, Mississippi Code of 1972, is amended as follows:

§ 15-3-109. When transfer made or obligation incurred. For the purposes of this article:

(a) A transfer is made:

(i) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee;

(b) If applicable law permits the transfer to be perfected as provided in paragraph (a) and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is deemed made immediately before the commencement of the action;

(c) If applicable law does not permit the transfer to be perfected as provided in paragraph (a), the transfer is made when it becomes effective between the debtor and the transferee;

(d) A transfer is not made until the debtor has acquired rights in the asset transferred;

(e) An obligation is incurred:

(i) If oral, when it becomes effective between the parties; or

(ii) If evidenced by a writing record, when the writing executed record signed by the obligor is delivered to or for the benefit of the obligee.

SECTION 7. Section 15-3-111, Mississippi Code of 1972, is amended as follows:

§ 15-3-111. Remedies of creditors. (1) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in Section 15-3-113, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,;

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

SECTION 8. Section 15-3-113, Mississippi Code of 1972, is amended as follows:

§ 15-3-113. Defenses and liability of transferees or obligee. (1) A transfer or obligation is not voidable under Section 15-3-107(1) against a person who that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a creditor under Section 15-3-111(1)(a), the following rules apply:

(2) (a) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 15-3-111(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) (i) The first transferee of the asset or the person for whose benefit the transfer was made; or

(b) (ii) Any subsequent transferee an immediate or mediate transferee of the first transferee, other than

(A) a good-faith transferee or obligee who that took for value or from

(B) any subsequent transferee or obligee an immediate or mediate good-faith transferee of a person described in clause (A).

(b) Recovery pursuant to Section 15-3-111(1)(a) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (a)(i) or (ii).

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain any an interest in the asset transferred;

(b) Enforcement of any an obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under Section 15-3-107(2)(l), (m) or (n) if the transfer results from:

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

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under Section 15-3-107(2)(n):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless made, except to the extent the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

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

(7) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraph (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).

(c) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).

(d) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.

(8) Proof of matters referred to in this section is sufficient if established by a preponderance of the evidence.

SECTION 9. Section 15-3-115, Mississippi Code of 1972, is amended as follows:

§ 15-3-115. Limitation of actions. A cause of action with respect to a fraudulent transfer or obligation under this article is extinguished unless action is brought:

(a) Under Section 15-3-107(1), within not later than three (3) years after the transfer was made or the obligation was incurred or, if later, within not later than one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under Section 15-3-107(2)(l) or (m), within not later than three (3) years after the transfer was made or the obligation was incurred; or

(c) Under Section 15-3-107(2)(n), within not later than one (1) year after the transfer was made or the obligation was incurred.

SECTION 10. (a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

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

SECTION 11. (a) In this section:

(1) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).

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

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of this Act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

SECTION 12. Section 15-3-117, Mississippi Code of 1972, is amended as follows:

§ 15-3-117. Applicability of principles of law and equity. Unless displaced by the provisions of this article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

SECTION 13. Section 15-3-119, Mississippi Code of 1972, is amended as follows:

§ 15-3-119. Application and construction of Act. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

SECTION 14. Section 15-3-121, Mississippi Code of 1972, is amended as follows:

§ 15-3-121. Short title. Sections 15-3-101 through 15-3-121, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the “Uniform Fraudulent Transfer Act.” “Uniform Voidable Transactions Act.”

SECTION 15. Section 11-5-75, Mississippi Code of 1972, is amended as follows:

11-5-75. The chancery court shall have jurisdiction of causes of action filed under the Uniform Fraudulent Transfer Act Uniform Voidable Transactions Act. Upon such a complaint, a writ of sequestration or injunction, or both, may be issued upon like terms and conditions as such writs may be issued in other cases, and subject to such proceedings and provisions thereafter as are applicable in other cases of such writs; and the chancellor of the proper district shall have power and authority to grant orders for receivers, in same manner as if the creditor had recovered judgment and had execution returned “no property found.” The creditor in such case shall have a lien upon the property described therein from the filing of his complaint, except as against bona fide purchasers before the service of process upon the defendant in the complaint.

SECTION 16. Section 91-9-707, Mississippi Code of 1972, is amended as follows:

91-9-707. Claims or actions against property subject to qualified disposition; claims or actions against trustees.

(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for the avoidance of a qualified disposition, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act Uniform Voidable Transactions Act, Section 15-3-101 et seq., and in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was also made with actual intent to defraud the creditor.

(b)(1) Notwithstanding Section 15-3-115, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to a qualified disposition trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to a qualified disposition trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subsection (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to a qualified disposition trust at the time any public record is made of any transfer of property relative to the qualified disposition, including, but not limited to, the conveyance of real property that is recorded in the office of the chancery clerk of the county in which the property is located or the filing of a financing statement under Title 75, Chapter 9, Mississippi Code of 1972, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with the intent to defraud that specific creditor.

(c) For purposes of this article, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on, or after July 1, 2014, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of Section 91-9-703(n)(2) and (3).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition as are provided in this section and Section 91-9-711, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition. For purposes of this section, counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust that is the subject of a qualified disposition.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date the action is brought, an action by a creditor with respect to the qualified disposition would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made by means of the same qualified disposition trust, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this article. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) A trust that is the subject of a qualified disposition shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in Section 91-9-709 or serves as an investment advisor pursuant to Section 91-9-717.

(i)(1) Notwithstanding any provision of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and the creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of one or more of the following:

(A) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of such debt;

(B) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, if the death, personal injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission of either the transferor or by another person for whom the transferor is or was vicariously liable, but only to the extent of the claim against the transferor or other person for whom the transferor is or was vicariously liable;

(C) To the State of Mississippi or any political subdivision thereof, including, but not limited to, court-ordered restitution in a criminal matter; or

(D) To any creditor in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) if the transferor failed to maintain a One Million Dollar (\$1,000,000.00) umbrella policy as required by subsection (1).

(2)(A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final nonappealable determination of a Mississippi court or a fully domesticated, final nonappealable order of a court of another state that the debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that any attempt would be futile.

(B) Nothing in this subsection (i)(2) shall be construed to prohibit the court from making the findings required in subsection (i)(2)(A) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

(k) In addition to provisions of subsection (j), to the extent subsection (j) applies to the laws of any foreign country:

(1) Neither a qualified disposition trust nor any disposition made subject to the terms of the qualified disposition trust is subject to the laws of any foreign country, nor is any such qualified disposition trust or the disposition void, voidable, liable to be set aside, or defective in any manner for any reason including, but not limited to:

(A) The law of any foreign country prohibits or does not recognize the concept of a qualified disposition trust; or

(B) The qualified disposition trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to the right, claim, or interest.

(2) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(A) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(B) No heirship rights described in subsection (k)(2)(A) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate Title 15, Chapter 3, Mississippi Code of 1972; and

(C) Subsection (k)(1) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust;

(3) No judgment or other holding of any judicial body of any foreign country, including, but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including, but not limited to, estoppel, to the extent the judgment or other holding concerns a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust or to the extent the judgment or other holding concerns property held by the qualified disposition trust.

(4) Subsection (a) applies in addition to all other provisions of this article.

(1) The transferor shall obtain a general liability policy and, if applicable, a professional liability policy, and each policy must have a policy limit of at least One Million Dollars (\$1,000,000.00). Policy premiums must be paid by the transferor.

SECTION 17. Except as otherwise provided in this chapter:

(a) The amendments apply to a transfer made or obligation incurred on or after the effective date of the enacting legislation;

(b) The amendments do not apply to a transfer made or obligation incurred before the effective date of the enacting legislation;

(c) The amendments do not apply to a right of action that has accrued before the effective date of the enacting legislation;

(d) For the foregoing purposes a transfer is made and an obligation is incurred at the time provided in Section 15-3-109 of the act.

SECTION 18. This act shall take effect and be in force from and after July 1, 2015.

The Uniform Fraudulent Transfer Act (Miss. Code Ann. § 15-3-101 et seq.) provides a creditor with the means to reach assets a debtor has transferred to another person to keep them from being used to satisfy a debt.

EXHIBIT E

Uniform Fraudulent Transfer Act Amendments: Voting Form

(Circle or Underline Responses)

ULC Amendment (Discussion Draft Line Number)	Recommend Amendments	Approve of Amendments, with some revised language	Do Not Recommend	Not Sure/No Opinion
1. Change Name from Uniform Fraudulent Transfer Act to Uniform Voidable Transactions Act (Lines 326-328)	Yes	Yes, but with changes	No	Not Sure/No Opinion
2. Create Choice of Law Section (Line 290-295)	Yes	Yes, but with changes	No	Not Sure/No Opinion
3. Burden of Proof (Lines 182-183) (Lines 268-279)	Yes	Yes, but with changes	No	Not Sure/No Opinion
4. Deletion of Special Definition of “Insolvency for Partnerships” (Lines 115-118)	Yes	Yes, but with changes	No	Not Sure/No Opinion
5. Defenses (Lines 226, 241- 253, 257-259)	Yes	Yes, but with changes	No	Not Sure/No Opinion
6. Create Series Organization Section (Lines 296-315)	Yes	Yes, but with changes	No	Not Sure/No Opinion
7. Medium Neutrality (Ex. Lines 93-94)	Yes	Yes, but with changes	No	Not Sure/No Opinion
Other Amendments				
8.	Yes	Yes, but with changes	No	Not Sure/No Opinion
9.	Yes	Yes, but with changes	No	Not Sure/No Opinion

Name: _____

Add comments on back if needed.