

2015 HOUSE JUDICIARY

HB 1135

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1135
1/12/2015
21839

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to renaming the Uniform Fraudulent Transfers Act the Uniform Voidable Transactions Act and making revisions; and to provide for application.

Minutes:

Testimony #1

Chairman K.Koppelman: Opened the hearing on HB 1135 for testimony in support.

Rep. D. Larson: Discussed the bills since I took home them home and have a problem in regard to the mental health. They changed the word person to individual. In some of this language it says person all the way through it. I am confused with the terminology.

Chairman K.Koppelman: In law the word person can mean more than a human being. It can mean a company, entity etc. That is why you see this usage. When we are specifically talking about a human being we have gone back to the terminology individual.

Rep. K. Wallman: The diagnostically and statistical manual , which is the bible for mental health and the new revision includes the word individual so for consistency sake it is my understanding that is why that language is being changed with human service bills.

Rep. D. Larson: I don't have a problem with changing that. I wondered why we are continuing in other things to refer to a person.

Chairman K.Koppelman: That is the reason. You will also see it in criminal justice bills where we are talking about crimes that people commit you will see the term individual versus persons. When a change like that takes place the Legislative Counsel will not go through the entire code and make the change everywhere. They will often do it as bills come up.

Rep. D. Larson: This bill Senator Hogue is going to be introducing on page 4 line 4.

Senator Hogue: Representing Commissioner of the National Conference of the Uniform Law Commissioners: (See Testimony #1) Went over changes in the bill.

(5:00-12:04) I would characterize this bill as an update and clarification of our existing voidable transaction statute formerly known as fraudulent transfer's statute.

Rep. Lois Delmore: How many states have adopted this?

Senator Hogue: There are three states that have proposed it this session. It just came out from the commission. It went through its second reading. The proposed changes are heard in one year and they have to be heard the second year and voted on. July of 2014 they were approved. New Mexico, Indiana and North Dakota have introduced it so far.

Rep. K. Wallman: On page 4 it reads a little like who's on first. Would it not be simpler to say an organization means business nonprofit etc.?

Senator Hogue: You will not get an argument from me. Going back to the commission process try to imagine a large ball room filled with 300 lawyers. The lawyers do this in painful detail. I cannot answer your question, but these definitions get the attention of a lot of lawyers.

Chairman K.Koppelman: We were having the discussion about individuals and persons in law. Persons can be meaning entity etc. Can you add something to this as an attorney?

Senator Hogue: I always try to use the phrase natural person. In that way avoid the ambiguity between the different entities that the law regards as individuals versus a natural person. There is a distinction that is often useful. The commission has used the term an organization can be a person, but not a natural person. It is a stylistic issue.

Rep. L. Klemin: Person means all of these different entities: corporations, partnerships, limited liability companies and individuals. In this particular statute the word that they are using is organization so in saying that an organization means a person other than an individual that is short hand for saying an organization is a corporation limited liability partnership etc. except an individual so an organization would be everything that is included in the definition of person except an individual.

Rep. K. Wallman: Couldn't we just say that? As long as it has the same meaning?

Rep. L. Klemin: Now when you said making it accessible to the average everyday person? Do you really meaning individual. So when you want to refer to natural person you have to say that.

Chairman K.Koppelman: Does this statute govern any of the entities that Rep. Klemin just listed. Would it include sole proprietorships or not?

Senator Hogue: It certainly would.

Chairman K.Koppelman: When you talked about selection of law what was that status quo since this has not been passed anywhere what is the governing law when there is a dispute among states on this issue?

Senator Hogue: Every state has common law where the court in one jurisdiction is supposed to make a decision about whether a particular transaction should be heard in North Dakota or South Dakota. One party was located say in ND and one party was located in SD and maybe his real estate is in one state will then we probably would keep it in that state. What if it was a motor vehicle that went from ND to SD and one party is in SD and we have common law that addresses which state is the proper venue to hear the case and that was not present in this act so for the first time it tries to spell it out. Rather than going to the common law lets specify in statue whose law should govern.

Chairman K.Koppelman: In regard to the timing; how does it play out as it passes in the other states or will it be controversial?

Senator Hogue: No I do not expect this to be controversial at all. I expect it to pass in every jurisdiction that proposes it. This is a bill just clarifying that status of the law.

Marilyn Foss, General Counsel for the ND Bankers Association: It is mostly technical and it only took 59 pages and the authority is a lawyer. This bill tries to confirm the state law with respect to voidable transfers to the federal bankruptcy law and how it applies to avoidable transfers. A transfer becomes voidable or avoidable under transfer law when it has been sold or transferred for a value called consideration that is not equitant to the value of whatever asset it was transferred. Therefore the creditor who has lent money against it and has a security interest in it when you have an insolvent borrower in my case has been deprived of value to which that creditor is entitled that is why it becomes voidable.

Tony Weiler, Executive Director of the State Bar Association of ND: We support this bill.

Opposition: None

Hearing closed.

Motion Made to Do Pass by Rep. Lois Delmore: Seconded by Rep. G. Paur

Discussion: None

Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Mary Johnson:

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1135**

House **JUDICIARY** Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Lois Delmore: Seconded By Rep. G. Paur

| Representative | Yes | No | Representative | Yes | No |
|-----------------------|------------|-----------|-----------------------|------------|-----------|
| Chairman K. Koppelman | X | | Rep. Pamela Anderson | X | |
| Vice Chairman Karls | X | | Rep. Delmore | X | |
| Rep. Brabandt | X | | Rep. K. Wallman | X | |
| Rep. Hawken | ----- | | | | |
| Rep. Mary Johnson | X | | | | |
| Rep. Klemin | X | | | | |
| Rep. Kretschmar | X | | | | |
| Rep. D. Larson | X | | | | |
| Rep. Maragos | X | | | | |
| Rep. Paur | x | | | | |
| | | | | | |
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Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Mary Johnson:

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1135: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1135 was placed on the
Eleventh order on the calendar.

2015 SENATE JUDICIARY


HB 1135

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1135
3/16/2015
24846

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Minutes:

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Chairman Hogue opened the public hearing on HB 1135.

Chairman Hogue: District 38. See attachment #1.

Marilyn Foss: North Dakota Banker's Association. We support HB 1135; voidable transactions can be an issue for financial institutions because they tend to involve people who are manipulating their assets in order to avoid paying creditors.

Tom Weiler: Executive Director State Bar Association. We support HB 1135 and ask for a do pass. Our association has a history of supporting uniform laws and the good work done by the commission.

Senator Grabinger: How much does the bar look into the uniform bills, what is your process?

Tom Weiler: There are several attorneys who are on the uniform law commission and every time a bill comes out we look at it, weigh in on it and in instances where we do not have expertise in that area I would talk to someone like Ms. Foss.

There was no further testimony for HB 1135, the public hearing was closed, Chairman Hogue made a motion for a do pass with a second by Senator Luick, there was no discussion, roll was taken, the motion passed 6-0-0 with Chairman Hogue carrying the bill to the floor.

Date: 3/16/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1135

Senate JUDICIARY Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Hogue Seconded By Sen. Luick

| Senators | Yes | No | Senators | Yes | No |
|----------------|-----|----|----------------|-----|----|
| Chairman Hogue | ✓ | | Sen. Grabinger | ✓ | |
| Sen. Armstrong | ✓ | | Sen. C. Nelson | ✓ | |
| Sen. Casper | ✓ | | | | |
| Sen. Luick | ✓ | | | | |
| | | | | | |

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

HB 1135: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1135 was placed on the
Fourteenth order on the calendar.

2015 TESTIMONY

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pg 1

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF HB 1135**

2 **House Judiciary Committee**

3 **January 12, 2015**

4
5
6 Good Morning Chairman Koppelman and members of the committee. My
7 name is David Hogue. I am a North Dakota state senator representing District 38.
8 I am also a commissioner of the North Dakota delegation of the National
9 Conference of Commissioners on Uniform State Laws.

10 HB 1135 relates to "voidable transactions" and is a major component of the
11 law relating to debtor and creditor relations. It has previously been described as
12 "fraudulent transfers."

13 I support adoption of House Bill 1135 for several reasons. First, HB 1135 is
14 fairly regarded as making technical corrections and improvements to our existing
15 voidable transfer statute. HB 1135 thus represents an update to this important
16 segment of our debtor/creditor relations law. Second, HB 1135 clarifies
17 important areas of the law that are ambiguous, such as which party bears the
18 burden of proof for certain factual elements in an alleged voidable transfer.

19 HB 1135 is the product of the National Conference of Commissioners on
20 Uniform State Laws (the "Conference"). HB 1135 represents the Conference's

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1 continued work on this area of the law. Besides North Dakota, these
2 amendments to the voidable transactions statute are being proposed in Indiana
3 and New Mexico.

4 Here are the changes to the Act.

5 **Name Change**: The historical term "Fraudulent Transfers" is removed and
6 replaced with "Voidable Transactions." There are two reasons for this change.
7 First, proof of fraud is not an element of proof in setting aside a transaction.
8 Second, a voidable transaction may arise from incurring a debt or other
9 obligation, not merely by making a transfer of an asset.

10 **Evidentiary Matters**: HB 1135 clarifies which party bears the burden of
11 proof for establishing a voidable transaction. This is an important clarification
12 that arises in the course of a voidable transaction dispute.

13 **Medium Neutrality**: HB 1135 replaces requirements of a "writing" with the
14 term "record." This change recognizes that parties conduct business using
15 electronic messages that are not "writings."

16 **Protection of Innocent Transferees**: HB 1135 also clarifies the protection
17 available to a secondary transferee. That is, the transferee who pays value and
18 receives an asset in good faith from the first transferee who was a party to the

~~#1~~ HB 1135
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1 voidable transaction. This provision mirrors the treatment the secondary
2 transferee would receive in US Bankruptcy Court.

3 **Choice of Law**: For the first time, HB 1135 will add choice of law provisions
4 for transactions that occur in more than one state.

5 There are a few more technical corrections that I have not alluded to but I
6 am happy to supplement my testimony if you deem it helpful. Subject to
7 committee member questions, this completes my testimony respecting HB 1135.

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3/16/15



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