

# ENROLLMENT(S)

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**COUNCIL OF THE DISTRICT OF COLUMBIA**

**D.C. LAW 11-83**

**"Uniform Fraudulent Transfer Act of 1995".**

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 11-228 on first and second readings, October 10, 1995 and November 7, 1995 respectively. Following the signature of the Mayor on November 27, 1995, pursuant to Section 404(e) of "the Act", and was assigned Act No. 11-160 and published in the December 8, 1995, edition of the D.C. Register (Vol. 42 page 6773) and transmitted to Congress on December 8, 1995 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 11-83, effective February 9, 1996.



DAVID A. CLARKE  
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

Dec.	8,11,12,13,14,15,18,19,20,21,22,27
Jan.	3,4,5,8,9,22,23,24,25,26,29,30,31
Feb.	1,2,5,6,7,8

AN ACT  
D.C. ACT 11-160

*Codification  
District of  
Columbia  
Code  
1996 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
NOVEMBER 27, 1995

To enact the Uniform Fraudulent Transfer Act in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Fraudulent Transfer Act of 1995".

Sec. 2. Title 28 of the District of Columbia Code is amended as follows:

(a) The table of contents is amended by striking the heading "31. Fraudulent Conveyances . . . §§ 28-3101 to 28-3103." and inserting the heading "31. Fraudulent Transfers . . . §§ 28-3101 to 28-3111." in its place.

(b) Chapter 31 is amended to read as follows:

"Chapter 31. Fraudulent Transfers.

"Sec.

"28-3101. Definitions.

"28-3102. Insolvency.

"28-3103. Value.

"28-3104. Transfers fraudulent as to present and future creditors.

"28-3105. Transfers fraudulent as to present creditors.

"28-3106. When transfer is made or obligation is incurred.

"28-3107. Remedies of creditors.

"28-3108. Defenses, liability, and protection of transferee.

"28-3109. Extinguishment of cause of action.

"28-3110. Supplementary provisions.

"28-3111. Uniformity of application and construction.

"§ 28-3101. Definitions.

"For the purposes of this chapter, the term:

"(1) "Affiliate" means:

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

Section  
28-3101

**ENROLLED ORIGINAL**

person who holds the securities:

"(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

"(ii) Solely to secure a debt, if the person has not exercised the power to vote;

"(B) A corporation having 20% or more of its outstanding voting securities that are directly or indirectly owned, controlled, or held with power to vote by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

"(i) As a fiduciary or agent without sole power to vote the securities; or

"(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

"(C) A person whose business is operated by the debtor under a lease or other agreement, or a person whose assets are substantially all controlled by the debtor; or

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

"(2) "Asset" means property of a debtor, but does not include:

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

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

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

"(3) "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.

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

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

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

"(7) "Insider" includes:

"(A) If the debtor is an individual:

"(i) A relative of the debtor or of a general partner of the debtor;

"(ii) A partnership in which the debtor is a general partner;

"(iii) A general partner in a partnership described in subparagraph (ii) of this subparagraph;

"(iv) A corporation of which the debtor is a director, officer, or person in control;

"(v) An unincorporated business organization in which the debtor has capital participation as a member or partner with limitation of liability for that participation, if that capital participation includes the right to conduct the business of the organization; or

**ENROLLED ORIGINAL**

"(vi) A member or partner in an unincorporated business organization described in sub-subparagraph (v) of this subparagraph who has the right to conduct the business of the organization or who controls the organization;

"(B) If the debtor is a corporation:

"(i) A director of the debtor;

"(ii) An officer of the debtor;

"(iii) A person in control of the debtor;

"(iv) A partnership in which the debtor is a general partner;

"(v) A general partner in a partnership described in sub-subparagraph (iv) of this subparagraph; or

"(vi) A relative of a general partner, director, officer, or person in control of the debtor;

"(C) If the debtor is a partnership:

"(i) A general partner in the debtor;

"(ii) A relative of a general partner in, or a general partner of, the partnership, or a person in control of the debtor;

"(iii) Another partnership in which the debtor is a general partner;

"(iv) A general partner in a partnership described in sub-subparagraph (iii) of this subparagraph; or

"(v) A person in control of the debtor;

"(D) If the debtor is an unincorporated business organization in which members or partners receive limitation of liability for their capital participation in the organization:

"(i) A member or partner of the organization who has the right to conduct the business of the organization;

"(ii) A person who controls the organization; or

"(iii) A relative of a person described in sub-subparagraph (i) or (ii) of this subparagraph;

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

"(F) A managing agent of the debtor.

"(8) "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.

"(9) "Person" means an individual, partnership, corporation, association, organization, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

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

"(11) "Relative" means an individual related by consanguinity within the 3rd degree as determined by the common law, a spouse, or an individual related to a spouse within

**ENROLLED ORIGINAL**

the 3rd degree as so determined, and includes an individual in an adoptive relationship within the 3rd degree.

"(12) "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, and creation of a lien or other encumbrance.

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

"§ 28-3102. Insolvency.

Section  
28-3102

"(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

"(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

"(c) A partnership is insolvent under subsection (a) of this section 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.

"(d) 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 chapter.

"(e) 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.

"§ 28-3103. Value.

Section  
28-3103

"(a) 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. 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.

"(b) For the purposes of sections 28-3104(a)(2) and 28-3105, 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.

"(c) 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.

"§ 28-3104. Transfers fraudulent as to present and future creditors.

New Section  
28-3104

"(a) A transfer made, or obligation incurred, by a debtor is fraudulent 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:

"(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

"(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

**ENROLLED ORIGINAL**

"(A) 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

"(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

"(b) In determining actual intent under subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

"(1) The transfer or obligation was to an insider;

"(2) The debtor retained possession or control of the property transferred after the transfer;

"(3) The transfer or obligation was disclosed or concealed;

"(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

"(5) The transfer was of substantially all the debtor's assets;

"(6) The debtor absconded;

"(7) The debtor removed or concealed assets;

"(8) 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;

"(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

"(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

"(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"§ 28-3105. Transfers fraudulent as to present creditors.

**New Section  
28-3105**

"(a) A transfer made, or obligation incurred, by a debtor is 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.

"(b) A transfer made by a debtor is 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.

**New Section  
28-3106**

"§ 28-3106. When transfer is made or obligation is incurred.

"For the purposes of this chapter:

"(1) A transfer is made:

"(A) With respect to an asset that is real property other than a fixture, 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 applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is

**ENROLLED ORIGINAL**

superior to the interest of the transferee; and

"(B) 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 chapter that is superior to the interest of the transferee.

"(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of this subsection and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

"(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1) of this subsection, the transfer is made when it becomes effective between the debtor and the transferee.

"(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

"(5) An obligation is incurred:

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

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

"§ 28-3107. Remedies of creditors.

**New Section  
28-3107**

"(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in section 28-3108, may obtain:

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

"(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by sections 16-501 through 16-584;

"(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

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

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

"(C) Any other relief the circumstances may require.

"(b) 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.

"§ 28-3108. Defenses, liability, and protection of transferee.

**New Section  
28-3108**

"(a) A transfer or obligation is not voidable under section 28-3104(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

"(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 28-3107(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount



**ENROLLED ORIGINAL**

necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

"(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

"(c) If the judgment under subsection (b) of this section 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.

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

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

"(2) Enforcement of any obligation incurred; or

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

"(e) A transfer is not voidable under section 28-3104(a)(2) or section 28-3105 if the transfer results from:

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

"(2) Enforcement of a security interest in compliance with sections 28:9-101 through 28:9-507.

"(f) A transfer is not voidable under section 28-3105(b):

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

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

"(3) 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.

"§ 28-3109. Extinguishment of cause of action.

"A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

"(1) Under section 28-3104(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was, or could reasonably have been discovered by the claimant;

"(2) Under section 28-3104(a)(2) or section 28-3105(a), within 4 years after the transfer was made or the obligation was incurred; or

"(3) Under section 28-3105(b), within 1 year after the transfer was made or the obligation was incurred.

"§ 28-3110. Supplementary provisions.

"Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the laws relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating

New Section  
28-3109

New Section  
28-3110

**ENROLLED ORIGINAL**

cause, supplement the provisions of this chapter.

"§ 28-3111. Uniformity of application and construction.

**New Section  
28-3111**

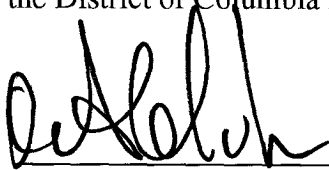
"This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it."

Sec. 3. Fiscal impact.

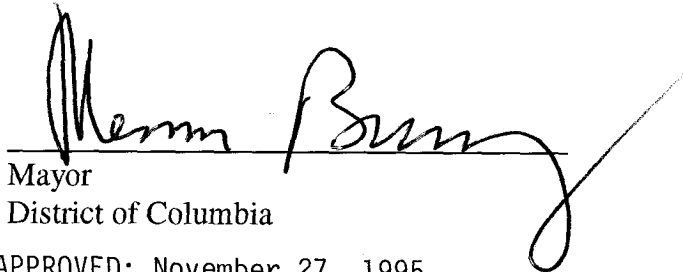
This act will have no fiscal impact.

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED: November 27, 1995



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

Docket No.

B11-228

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 10-10-95

VOICE VOTE  
 RECORDED VOTE ON REQUEST

APPROVED

RAY

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*Charles Jones*  
Secretary to the Council

*November 9, 1995*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 11-7-95

VOICE VOTE  
 RECORDED VOTE ON REQUEST

APPROVED

SMITH

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

*Charles Jones*  
Secretary to the Council

*November 9, 1995*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE  
 RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date