

HB 1127 - AS INTRODUCED

2026 SESSION

26-2276
09/05

HOUSE BILL **1127**

AN ACT relative to the uniform voidable transactions act.

SPONSORS: Rep. Lynn, Rock. 17; Rep. Berch, Ches. 6

COMMITTEE: Judiciary

ANALYSIS

This bill repeals the uniform fraudulent transfer act and replaces it with the uniform voidable transactions act.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT relative to the uniform voidable transactions act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Uniform Voidable Transactions Act. Amend RSA by inserting after chapter
2 545-A the following new chapter:

3 CHAPTER 545-B

4 UNIFORM VOIDABLE TRANSACTIONS ACT

5 545-B:1 Definitions. As used in this chapter:

6 I. "Affiliate" means:

7 (a) A person that directly or indirectly owns, controls, or holds with power to vote, 20
8 percent or more of the outstanding voting securities of the debtor, other than a person that holds the
9 securities:

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

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

12 (b) A corporation 20 percent or more of whose outstanding voting securities are directly
13 or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or
14 indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting
15 securities of the debtor, other than a person that holds the securities:

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

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

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

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

22 II. "Asset" means property of a debtor, but the term does not include:

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

24 (b) Property to the extent it is generally exempt under non-bankruptcy law; or

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

27 III. "Claim", except as used in "claim for relief", means a right to payment, whether or not
28 the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
29 disputed, undisputed, legal, equitable, secured, or unsecured.

30 IV. "Creditor" means a person that has a claim.

31 V. "Debt" means liability on a claim.

1 VI. "Debtor" means a person that is liable on a claim.

2 VII. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
3 optical, electromagnetic, or similar capabilities.

4 VIII. "Insider" includes:

5 (a) If the debtor is an individual:

6 (1) A relative of the debtor or of a general partner of the debtor;

7 (2) A partnership in which the debtor is a general partner;

8 (3) A general partner in a partnership described in subparagraph (a)(2); or

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

10 (b) If the debtor is a corporation:

11 (1) A director of the debtor;

12 (2) An officer of the debtor;

13 (3) A person in control of the debtor;

14 (4) A partnership in which the debtor is a general partner;

15 (5) A general partner in a partnership described in subparagraph (b)(4); or

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

17 (c) If the debtor is a partnership:

18 (1) A general partner in the debtor;

19 (2) A relative of a general partner in, a general partner of, or a person in control of
20 the debtor;

21 (3) Another partnership in which the debtor is a general partner;

22 (4) A general partner in a partnership described in subparagraph (c)(3); or

23 (5) A person in control of the debtor;

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

25 (e) A managing agent of the debtor.

26 IX. "Lien" means a charge against or an interest in property to secure payment of a debt or
27 performance of an obligation, and includes a security interest created by agreement, a judicial lien
28 obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

29 X. "Organization" means a person other than an individual.

30 XI. "Person" means an individual, estate, partnership, association, trust, business or
31 nonprofit entity, public corporation, government or governmental subdivision, agency, or
32 instrumentality, or other legal or commercial entity.

33 XII. "Property" means anything that may be the subject of ownership.

34 XIII. "Record" means information that is inscribed on a tangible medium or that is stored in
35 an electronic or other medium and is retrievable in perceivable form.

36 XIV. "Relative" means an individual related by consanguinity within the third degree as
37 determined by the common law, a spouse, or an individual related to a spouse within the third

1 degree as so determined, and includes an individual in an adoptive relationship within the third
2 degree.

3 XV. "Sign" means, with present intent to authenticate or adopt a record:

4 (a) To execute or adopt a tangible symbol; or

5 (b) To attach to or logically associate with the record an electronic symbol, sound, or
6 process.

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

10 XVII. "Valid lien" means a lien that is effective against the holder of a judicial lien
11 subsequently obtained by legal or equitable process or proceedings.

12 545-B:2 Insolvency.

13 I. A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than
14 the sum of the debtor's assets.

15 II. A debtor that is generally not paying the debtor's debts as they become due other than as
16 a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party
17 against which the presumption is directed the burden of proving that the nonexistence of insolvency
18 is more probable than its existence.

19 III. Assets under this section do not include property that has been transferred, concealed,
20 or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a
21 manner making the transfer voidable under this chapter.

22 IV. Debts under this section do not include an obligation to the extent it is secured by a valid
23 lien on property of the debtor not included as an asset.

24 545-B:3 Value.

25 I. Value is given for a transfer or an obligation if, in exchange for the transfer or obligation,
26 property is transferred or an antecedent debt is secured or satisfied, but value does not include an
27 unperformed promise made otherwise than in the ordinary course of the promisor's business to
28 furnish support to the debtor or another person.

29 II. For the purposes of RSA 545-B:4, I(b) and RSA 545-B:5, a person gives a reasonably
30 equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly
31 conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or
32 disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security
33 agreement.

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

36 545-B:4 Transfer or Obligation Voidable as to Present or Future Creditor.

1 I. A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the
2 creditor's claim arose before or after the transfer was made or the obligation was incurred, if the
3 debtor made the transfer or incurred the obligation:

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

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

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

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

11 II. In determining actual intent under subparagraph I(a), consideration may be given,
12 among other factors, to whether:

13 (a) The transfer or obligation was to an insider;

14 (b) The debtor retained possession or control of the property transferred after the
15 transfer;

16 (c) The transfer or obligation was disclosed or concealed;

17 (d) Before the transfer was made or obligation was incurred, the debtor had been sued or
18 threatened with suit;

19 (e) The transfer was of substantially all the debtor's assets;

20 (f) The debtor absconded;

21 (g) The debtor removed or concealed assets;

22 (h) The value of the consideration received by the debtor was reasonably equivalent to
23 the value of the asset transferred or the amount of the obligation incurred;

24 (i) The debtor was insolvent or became insolvent shortly after the transfer was made or
25 the obligation was incurred;

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

28 (k) The debtor transferred the essential assets of the business to a lienor that
29 transferred the assets to an insider of the debtor.

30 III. A creditor making a claim for relief under paragraph I has the burden of proving the
31 elements of the claim for relief by a preponderance of the evidence.

32 545-B:5 Transfer or Obligation Voidable as to Present Creditor.

33 I. A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim
34 arose before the transfer was made or the obligation was incurred if the debtor made the transfer or
35 incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer
36 or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of
37 the transfer or obligation.

1 II. A transfer made by a debtor is voidable as to a creditor whose claim arose before the
2 transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was
3 insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

4 III. Subject to RSA 545-B:2, II, a creditor making a claim for relief under paragraph I or II
5 has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

6 545-B:6 When Transfer is Made or Obligation is Incurred. For the purposes of this chapter:

7 I. A transfer is made:

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

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

16 II. If applicable law permits the transfer to be perfected as provided in subparagraph I(a)
17 and the transfer is not so perfected before the commencement of an action for relief under this
18 chapter, the transfer is deemed made immediately before the commencement of the action;

19 III. If applicable law does not permit the transfer to be perfected as provided in
20 subparagraph I(a), the transfer is made when it becomes effective between the debtor and the
21 transferee;

22 IV. A transfer is not made until the debtor has acquired rights in the asset transferred; and

23 V. An obligation is incurred:

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

25 (b) If evidenced by a record, when the record signed by the obligor is delivered to or for
26 the benefit of the obligee.

27 545-B:7 Remedies of Creditor.

28 I. In an action for relief against a transfer or obligation under this chapter, a creditor,
29 subject to the limitations in RSA 545-B:8, may obtain:

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

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

34 (c) Subject to applicable principles of equity and in accordance with applicable rules of
35 civil procedure:

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

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

3 (3) Any other relief the circumstances may require.

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

6 545-B:8 Defenses, Liability, and Protection of Transferee or Obligee.

7 I. A transfer or obligation is not voidable under RSA 545-B:4, I(a) against a person that took
8 in good faith and for a reasonably equivalent value given the debtor or against any subsequent
9 transferee or obligee.

10 II. To the extent a transfer is avoidable in an action by a creditor under RSA 545-B:7, I(a),
11 the following rules apply:

12 (a) Except as otherwise provided in this section, the creditor may recover judgment for
13 the value of the asset transferred, as adjusted under paragraph III, or the amount necessary to
14 satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

17 (2) An immediate or mediate transferee of the first transferee, other than:

18 (A) A good-faith transferee that took for value; or

19 (B) An immediate or mediate good-faith transferee of a person described in
20 subparagraph II(a)(2)(A).

21 (b) Recovery pursuant to RSA 545-B:7, I(a) or II of or from the asset transferred or its
22 proceeds, by levy or otherwise, is available only against a person described in subparagraph II(a)(1)
23 or (2).

24 III. If the judgment under paragraph II is based upon the value of the asset transferred, the
25 judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to
26 adjustment as the equities may require.

27 IV. Notwithstanding voidability of a transfer or an obligation under this chapter, a good-
28 faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or
29 obligation, to:

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

31 (b) Enforcement of an obligation incurred; or

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

33 V. A transfer is not voidable under RSA 545-B:4, I(b) or RSA 545-B:5 if the transfer results
34 from:

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

1 (b) Enforcement of a security interest in compliance with Article 9 of the Uniform
2 Commercial Code, RSA 382-A:9-101 to 382-A:9-628, other than acceptance of collateral in full or
3 partial satisfaction of the obligation it secures.

4 VI. A transfer is not voidable under RSA 545-B:5, II:

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

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

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

11 VII. The following rules determine the burden of proving matters referred to in this section:

12 (a) A party that seeks to invoke paragraph I, IV, V, or VI has the burden of proving the
13 applicability of that paragraph.

14 (b) Except as otherwise provided in subparagraphs VII(c) and (d), the creditor has the
15 burden of proving each applicable element of paragraph II or III.

16 (c) The transferee has the burden of proving the applicability to the transferee of
17 subparagraph II(a)(2)(A) or (B).

18 (d) A party that seeks adjustment under paragraph III has the burden of proving the
19 adjustment.

20 VIII. The standard of proof required to establish matters referred to in this section is
21 preponderance of the evidence.

22 545-B:9 Extinguishment of Claim for Relief. A claim for relief with respect to a transfer or
23 obligation under this chapter is extinguished unless action is brought:

24 I. Under RSA 545-B:4, I(a), not later than 4 years after the transfer was made or the
25 obligation was incurred or, if later, not later than one year after the transfer or obligation was or
26 could reasonably have been discovered by the claimant;

27 II. Under RSA 545-B:4, I(b) or RSA 545-B:5, I, not later than 4 years after the transfer was
28 made or the obligation was incurred; or

29 III. Under RSA 545-B:5, II, not later than one year after the transfer was made.

30 545-B:10 Governing Law.

31 I. In this section, the following rules determine a debtor's location:

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

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

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

1 II. A claim for relief in the nature of a claim for relief under this chapter is governed by the
2 local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation
3 is incurred.

4 545-B:11 Application to Series Organization.

5 I. In this section:

6 (a) "Protected series" means an arrangement, however denominated, created by a series
7 organization that, pursuant to the law under which the series organization is organized, has the
8 characteristics set forth in subparagraph I(b).

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

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

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

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

22 II. A series organization and each protected series of the organization is a separate person
23 for purposes of this chapter, even if for other purposes a protected series is not a person separate
24 from the organization or other protected series of the organization.

25 545-B:12 Supplementary Provisions. Unless displaced by the provisions of this chapter, the
26 principles of law and equity, including the law merchant and the law relating to principal and agent,
27 estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating
28 or invalidating cause, supplement its provisions.

29 545-B:13 Uniformity of Application and Construction. This chapter shall be applied and
30 construed to effectuate its general purpose to make uniform the law with respect to the subject of
31 this chapter among states enacting it.

32 545-B:14 Relation to Electronic Signatures in Global and National Commerce Act. This chapter
33 modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15
34 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15
35 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section
36 103(b) of that act, 15 U.S.C. Section 7003(b).

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1 545-B:15 Short Title; Predecessor References. The predecessor of this chapter, RSA 545-A, was
2 cited as the uniform fraudulent transfer act, and this chapter, RSA 545-B, may be cited as the
3 uniform voidable transactions act.

4 2 Repeal. RSA 545-A, relative to uniform fraudulent transfer act, is repealed.

5 3 Applicability.

6 I. RSA 545-A shall apply to a transfer made or obligation incurred before the effective date
7 of this act.

8 II. RSA 545-B, as inserted by section 1 of this act, shall apply to a transfer made or
9 obligation incurred on or after the effective date this act.

10 III. RSA 545-B, as inserted by section 1 of this act, shall not apply to a right of action that
11 has accrued before the effective date of this act.

12 IV. For purposes of this section, a transfer is made and an obligation is incurred at the time
13 provided in RSA 545-A:6.

14 4 Effective Date. This act shall take effect 60 days after its passage.