

**[No. 362]**

**(HB 5417)**

AN ACT to amend 1998 PA 434, entitled "An act to define and regulate fraudulent transfers and conveyances; to set aside and modify certain transfers and conveyances; to make uniform the law of fraudulent transfers; and to repeal acts and parts of acts," by amending section 8 (MCL 566.38).

*The People of the State of Michigan enact:*

**566.38 Transfer or obligation not voidable; recovery of judgment; rights of good-faith transferee or obligee. [M.S.A. 26.895(8)]**

Sec. 8. (1) A transfer or obligation is not voidable under section 4(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 7(1)(a), the creditor may recover a 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 either of the following:

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

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

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment shall 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 the voidability of a transfer or an obligation under this act, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to 1 or more of the following:

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

(b) Enforcement of any obligation incurred.

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

(5) A transfer is not voidable under section 4(1)(b) or 5 if the transfer results from either of the following:

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

(b) Enforcement of a security interest in compliance with article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to 440.9708.

(6) A transfer is not voidable under section 5(2) if 1 or more of the following occur:

(a) 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.

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

(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.

## 2000 PUBLIC AND LOCAL ACTS

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### **Effective date.**

Enacting section 1. This amendatory act takes effect July 1, 2001.

### **Conditional effective date.**

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5228 of the 90th Legislature is enacted into law.

Approved December 28, 2000.

Filed with Secretary of State December 28, 2000.

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**Compiler's note:** House Bill No. 5228, referred to in enacting section 2, was filed with the Secretary of State December 28, 2000, and became P.A. 2000, No. 348, Eff. July 1, 2001.

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