

STATE OF NEW YORK

7687--A

IN SENATE

May 12, 2016

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the debtor and creditor law, the civil practice law and rules, the estates, powers and trusts law, and the workers' compensation law, in relation to enacting the uniform voidable transactions act; and to repeal provisions of the debtor and creditor law relating to fraudulent conveyances

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Uniform Voidable Transactions Act."
3 § 2. Article 10 of the debtor and creditor law is REPEALED and a
4 new article 10 is added to read as follows:

ARTICLE 10

UNIFORM VOIDABLE TRANSACTIONS ACT

7 Section 270. Definitions.
8 271. Insolvency.
9 272. Value.
10 273. Transfer or obligation voidable as to present or
future
11 creditor.
12 274. Transfer or obligation voidable as to present
creditor.
13 275. When transfer is made or obligation is incurred.

14 276. Remedies of creditor.
 15 277. Defenses, liability, and protection of transferee
or
 16 obligee.
 17 278. Extinguishment of claim for relief.
 18 279. Governing law.
 19 280. Supplementary provisions.
 20 281. Uniformity of application and construction.
 21 281-a. Relation to electronic signatures in global and
national
 22 commerce act.
 23 § 270. Definitions. As used in this article:

EXPLANATION--Matter in italics (underscored) is new; matter in
 brackets
 [-] is old law to be omitted.

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1 (a) "Affiliate" means:
 2 (1) a person that directly or indirectly owns, controls, or holds
with
 3 power to vote, twenty percent or more of the outstanding voting
securi-
 4 ties of the debtor, other than a person that holds the securities:
 5 (i) as a fiduciary or agent without sole discretionary power to
vote
 6 the securities; or
 7 (ii) solely to secure a debt, if the person has not in fact
exercised
 8 the power to vote;
 9 (2) a corporation twenty percent or more of whose outstanding
voting
 10 securities are directly or indirectly owned, controlled, or held
with
 11 power to vote, by the debtor or a person that directly or
indirectly
 12 owns, controls, or holds, with power to vote, twenty percent or more
of
 13 the outstanding voting securities of the debtor, other than a
person
 14 that holds the securities:
 15 (i) as a fiduciary or agent without sole discretionary power to
vote
 16 the securities; or
 17 (ii) solely to secure a debt, if the person has not in fact
exercised
 18 the power to vote;
 19 (3) a person whose business is operated by the debtor under a lease
or
 20 other agreement, or a person substantially all of whose assets
are
 21 controlled by the debtor; or
 22 (4) a person that operates the debtor's business under a lease
or
 23 other agreement or controls substantially all of the debtor's assets.

24 (b) "Asset" means property of a debtor, but the term does not
include:
25 (1) property to the extent it is encumbered by a valid lien;
26 (2) property to the extent it is generally exempt under non-
bankruptcy
27 law; or
28 (3) an interest in property held in tenancy by the entirety to
the
29 extent it is not subject to process by a creditor holding a
claim
30 against only one tenant.
31 (c) "Claim", except as used in "claim for relief", means a right
to
32 payment, whether or not the right is reduced to judgment,
liquidated,
33 unliquidated, fixed, contingent, matured, unmatured, disputed,
undis-
34 puted, legal, equitable, secured, or unsecured.
35 (d) "Creditor" means a person that has a claim.
36 (e) "Debt" means liability on a claim.
37 (f) "Debtor" means a person that is liable on a claim.
38 (g) "Electronic" means relating to technology having
electrical,
39 digital, magnetic, wireless, optical, electromagnetic, or similar
capa-
40 bilities.
41 (h) "Insider" includes:
42 (1) if the debtor is an individual:
43 (i) a relative of the debtor or of a general partner of the debtor;
44 (ii) a partnership in which the debtor is a general partner;
45 (iii) a general partner in a partnership described in
subparagraph
46 (ii) of this paragraph; or
47 (iv) a corporation of which the debtor is a director, officer,
or
48 person in control;
49 (2) if the debtor is a corporation:
50 (i) a director of the debtor;
51 (ii) an officer of the debtor;
52 (iii) a person in control of the debtor;
53 (iv) a partnership in which the debtor is a general partner;
54 (v) a general partner in a partnership described in subparagraph
(iv)
55 of this paragraph; or
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1 (vi) a relative of a general partner, director, officer, or person
in
2 control of the debtor;
3 (3) if the debtor is a partnership:
4 (i) a general partner in the debtor;
5 (ii) a relative of a general partner in, a general partner of,
or a
6 person in control of the debtor;
7 (iii) another partnership in which the debtor is a general partner;
8 (iv) a general partner in a partnership described in
subparagraph

9 (iii) of this paragraph; or
10 (v) a person in control of the debtor;
11 (4) an affiliate, or an insider of an affiliate as if the
affiliate
12 were the debtor; and
13 (5) a managing agent of the debtor.
14 (i) "Lien" means a charge against or an interest in property to
secure
15 payment of a debt or performance of an obligation, and includes a
secu-
16 rity interest created by agreement, a judicial lien obtained by legal
or
17 equitable process or proceedings, a common-law lien, or a
statutory
18 lien.
19 (j) "Organization" means a person other than an individual.
20 (k) "Person" means an individual, estate, partnership,
association,
21 trust, business or nonprofit entity, public corporation, government
or
22 governmental subdivision, agency, or instrumentality, or other legal
or
23 commercial entity.
24 (l) "Property" means anything that may be the subject of ownership.
25 (m) "Record" means information that is inscribed on a tangible
medium
26 or that is stored in an electronic or other medium and is retrievable
in
27 perceivable form.
28 (n) "Relative" means an individual related by consanguinity within
the
29 third degree as determined by the common law, a spouse, or an
individual
30 related to a spouse within the third degree as so determined,
and
31 includes an individual in an adoptive relationship within the
third
32 degree.
33 (o) "Sign" means, with present intent to authenticate or adopt
a
34 record:
35 (i) to execute or adopt a tangible symbol; or
36 (ii) to attach to or logically associate with the record an
electronic
37 symbol, sound, or process.
38 (p) "Transfer" means every mode, direct or indirect, absolute
or
39 conditional, voluntary or involuntary, of disposing of or parting
with
40 an asset or an interest in an asset, and includes payment of
money,
41 release, lease, license, and creation of a lien or other encumbrance.
42 (q) "Valid lien" means a lien that is effective against the holder
of
43 a judicial lien subsequently obtained by legal or equitable process
or
44 proceedings.

45 § 271. Insolvency. (a) A debtor is insolvent if, at a fair
valuation,
46 the sum of the debtor's debts is greater than the sum of the
debtor's
47 assets.
48 (b) A debtor that is generally not paying the debtor's debts as
they
49 become due other than as a result of a bona fide dispute is presumed
to
50 be insolvent. The presumption imposes on the party against which
the
51 presumption is directed the burden of proving that the nonexistence
of
52 insolvency is more probable than its existence.

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

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

4 § 272. Value. (a) Value is given for a transfer or an obligation
if,
5 in exchange for the transfer or obligation, property is transferred
or
6 an antecedent debt is secured or satisfied, but value does not
include
7 an unperformed promise made otherwise than in the ordinary course of
the
8 promisor's business to furnish support to the debtor or another
person.

9 (b) For the purposes of paragraph two of subdivision (a) of
section
10 two hundred seventy-three and section two hundred seventy-four of
this
11 article, a person gives a reasonably equivalent value if the
person
12 acquires an interest of the debtor in an asset pursuant to a
regularly
13 conducted, noncollusive foreclosure sale or execution of a power of
sale
14 for the acquisition or disposition of the interest of the debtor
upon
15 default under a mortgage, deed of trust, or security agreement.

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

19 § 273. Transfer or obligation voidable as to present or future
credi-
20 tor. (a) A transfer made or obligation incurred by a debtor is
voidable
21 as to a creditor, whether the creditor's claim arose before or after
the
22 transfer was made or the obligation was incurred, if the debtor made
the
23 transfer or incurred the obligation:
24 (1) with actual intent to hinder, delay, or defraud any creditor
of
25 the debtor; or
26 (2) without receiving a reasonably equivalent value in exchange
for
27 the transfer or obligation, and the debtor:
28 (i) was engaged or was about to engage in a business or a
transaction
29 for which the remaining assets of the debtor were unreasonably small
in
30 relation to the business or transaction; or
31 (ii) intended to incur, or believed or reasonably should have
believed
32 that the debtor would incur, debts beyond the debtor's ability to pay
as
33 they became due.
34 (b) In determining actual intent under paragraph one of
subdivision
35 (a) of this section, consideration may be given, among other factors,
to
36 whether:
37 (1) the transfer or obligation was to an insider;
38 (2) the debtor retained possession or control of the property
trans-
39 ferred after the transfer;
40 (3) the transfer or obligation was disclosed or concealed;
41 (4) before the transfer was made or obligation was incurred,
the
42 debtor had been sued or threatened with suit;
43 (5) the transfer was of substantially all the debtor's assets;
44 (6) the debtor absconded;
45 (7) the debtor removed or concealed assets;
46 (8) the value of the consideration received by the debtor was
reason-
47 ably equivalent to the value of the asset transferred or the amount
of
48 the obligation incurred;
49 (9) the debtor was insolvent or became insolvent shortly after
the
50 transfer was made or the obligation was incurred;
51 (10) the transfer occurred shortly before or shortly after a
substan-
52 tial debt was incurred; and
53 (11) the debtor transferred the essential assets of the business
to a
54 lienor that transferred the assets to an insider of the debtor.

1 (c) A creditor making a claim for relief under subdivision (a) of
this
2 section has the burden of proving the elements of the claim for
relief
3 by a preponderance of the evidence.

4 § 274. Transfer or obligation voidable as to present creditor.

(a) A
5 transfer made or obligation incurred by a debtor is voidable as to
a
6 creditor whose claim arose before the transfer was made or the
obli-
7 gation was incurred if the debtor made the transfer or incurred
the
8 obligation without receiving a reasonably equivalent value in
exchange
9 for the transfer or obligation and the debtor was insolvent at that
time
10 or the debtor became insolvent as a result of the transfer or
obli-
11 gation.

12 (b) A transfer made by a debtor is voidable as to a creditor
whose
13 claim arose before the transfer was made if the transfer was made to
an
14 insider for an antecedent debt, the debtor was insolvent at that
time,
15 and the insider had reasonable cause to believe that the debtor
was
16 insolvent.

17 (c) Subject to subdivision (b) of section two hundred seventy-one
of
18 this article, a creditor making a claim for relief under subdivision
(a)
19 or (b) of this section has the burden of proving the elements of
the
20 claim for relief by a preponderance of the evidence.

21 § 275. When transfer is made or obligation is incurred. For
the
22 purposes of this article:

23 (a) a transfer is made:
24 (1) with respect to an asset that is real property other than
a
25 fixture, but including the interest of a seller or purchaser
under a
26 contract for the sale of the asset, when the transfer is so
far
27 perfected that a good-faith purchaser of the asset from the
debtor
28 against which applicable law permits the transfer to be perfected
cannot
29 acquire an interest in the asset that is superior to the interest of
the
30 transferee; and

31 (2) with respect to an asset that is not real property or that is
a
32 fixture, when the transfer is so far perfected that a creditor
on a

33 simple contract cannot acquire a judicial lien otherwise than under
this
34 article that is superior to the interest of the transferee;
35 (b) if applicable law permits the transfer to be perfected as
provided
36 in subdivision (a) of this section and the transfer is not so
perfected
37 before the commencement of an action for relief under this article,
the
38 transfer is deemed made immediately before the commencement of
the
39 action;
40 (c) if applicable law does not permit the transfer to be perfected
as
41 provided in subdivision (a) of this section, the transfer is made
when
42 it becomes effective between the debtor and the transferee;
43 (d) a transfer is not made until the debtor has acquired rights in
the
44 asset transferred; and
45 (e) an obligation is incurred:
46 (1) if oral, when it becomes effective between the parties; or
47 (2) if evidenced by a record, when the record signed by the obligor
is
48 delivered to or for the benefit of the obligee.
49 § 276. Remedies of creditor. (a) In an action for relief
against a
50 transfer or obligation under this article, a creditor, subject to
the
51 limitations in section two hundred seventy-seven of this article,
may
52 obtain:
53 (1) avoidance of the transfer or obligation to the extent necessary
to
54 satisfy the creditor's claim;
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1 (2) an attachment or other provisional remedy against the asset
trans-
2 ferred or other property of the transferee if available under
applicable
3 law; and
4 (3) subject to applicable principles of equity and in accordance
with
5 applicable rules of civil procedure:
6 (i) an injunction against further disposition by the debtor or
a
7 transferee, or both, of the asset transferred or of other property;
8 (ii) appointment of a receiver to take charge of the asset
transferred
9 or of other property of the transferee; or
10 (iii) any other relief the circumstances may require.
11 (b) If a creditor has obtained a judgment on a claim against
the
12 debtor, the creditor, if the court so orders, may levy execution on
the
13 asset transferred or its proceeds.

14 § 277. Defenses, liability, and protection of transferee or
obligee.
15 (a) A transfer or obligation is not voidable under paragraph one
of
16 subdivision (a) of section two hundred seventy-three of this
article
17 against a person that took in good faith and for a reasonably
equivalent
18 value given the debtor or against any subsequent transferee or
obligee.
19 (b) To the extent a transfer is avoidable in an action by a
creditor
20 under paragraph one of subdivision (a) of section two hundred
seventy-
21 six of this article the following rules apply:
22 (1) Except as otherwise provided in this section, the creditor
may
23 recover judgment for the value of the asset transferred, as
adjusted
24 under subdivision (c) of this section, or the amount necessary to
satis-
25 fy the creditor's claim, whichever is less. The judgment may be
entered
26 against:
27 (i) the first transferee of the asset or the person for whose
benefit
28 the transfer was made; or
29 (ii) an immediate or mediate transferee of the first transferee,
other
30 than:
31 (A) a good-faith transferee that took for value; or
32 (B) an immediate or mediate good-faith transferee of a
person
33 described in clause (A) of this subparagraph.
34 (2) Recovery pursuant to paragraph one of subdivision (a) or
subdivi-
35 sion (b) of section two hundred seventy-six of this article of or
from
36 the asset transferred or its proceeds, by levy or otherwise, is
avail-
37 able only against a person described in subparagraph (i) or (ii)
of
38 paragraph one of this subdivision.
39 (c) If the judgment under subdivision (b) of this section is
based
40 upon the value of the asset transferred, the judgment must be for
an
41 amount equal to the value of the asset at the time of the
transfer,
42 subject to adjustment as the equities may require.
43 (d) Notwithstanding voidability of a transfer or an obligation
under
44 this article, a good-faith transferee or obligee is entitled, to
the
45 extent of the value given the debtor for the transfer or obligation,
to:

46 (1) a lien on or a right to retain an interest in the asset
trans-
47 ferred;
48 (2) enforcement of an obligation incurred; or
49 (3) a reduction in the amount of the liability on the judgment.
50 (e) A transfer is not voidable under paragraph two of subdivision
(a)
51 of section two hundred seventy-three or section two hundred seventy-
four
52 of this article if the transfer results from:
53 (1) termination of a lease upon default by the debtor when the
termi-
54 nation is pursuant to the lease and applicable law; or
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1 (2) enforcement of a security interest in compliance with article
nine
2 of the Uniform Commercial Code, other than acceptance of collateral
in
3 full or partial satisfaction of the obligation it secures.
4 (f) A transfer is not voidable under subdivision (b) of section
two
5 hundred seventy-four of this article:
6 (1) to the extent the insider gave new value to or for the benefit
of
7 the debtor after the transfer was made, except to the extent the
new
8 value was secured by a valid lien;
9 (2) if made in the ordinary course of business or financial affairs
of
10 the debtor and the insider; or
11 (3) if made pursuant to a good-faith effort to rehabilitate the
debtor
12 and the transfer secured present value given for that purpose as well
as
13 an antecedent debt of the debtor.
14 (g) The following rules determine the burden of proving
matters
15 referred to in this section:
16 (1) A party that seeks to invoke subdivision (a), (d), (e) or (f)
of
17 this section has the burden of proving the applicability of that
subdi-
18 vision.
19 (2) Except as otherwise provided in paragraphs three and four of
this
20 subdivision, the creditor has the burden of proving each
applicable
21 element of subdivision (b) or (c) of this section.
22 (3) The transferee has the burden of proving the applicability to
the
23 transferee of clause (A) or (B) of subparagraph (ii) of paragraph one
of
24 subdivision (b) of this section.
25 (4) A party that seeks adjustment under subdivision (c) of
this
26 section has the burden of proving the adjustment.

27 (h) The standard of proof required to establish matters referred to
in
28 this section is preponderance of the evidence.
29 § 278. Extinguishment of claim for relief. A claim for relief
with
30 respect to a transfer or obligation under this article is
extinguished
31 unless action is brought:
32 (a) under paragraph one of subdivision (a) of section two
hundred
33 seventy-three of this article, not later than four years after
the
34 transfer was made or the obligation was incurred or, if later, not
later
35 than one year after the transfer or obligation was or could
reasonably
36 have been discovered by the claimant;
37 (b) under paragraph two of subdivision (a) of section two
hundred
38 seventy-three or subdivision (a) of section two hundred seventy-four
of
39 this article, not later than four years after the transfer was made
or
40 the obligation was incurred; or
41 (c) under subdivision (b) of section two hundred seventy-four of
this
42 article, not later than one year after the transfer was made.
43 § 279. Governing law. (a) In this section, the following rules
deter-
44 mine a debtor's location:
45 (1) A debtor who is an individual is located at the individual's
prin-
46 cipal residence.
47 (2) A debtor that is an organization and has only one place of
busi-
48 ness is located at its place of business.
49 (3) A debtor that is an organization and has more than one place
of
50 business is located at its chief executive office.
51 (b) A claim for relief in the nature of a claim for relief under
this
52 article is governed by the local law of the jurisdiction in which
the
53 debtor is located when the transfer is made or the obligation
is
54 incurred.
55 § 280. Supplementary provisions. Unless displaced by the provisions
of
56 this article, the principles of law and equity, including the
law
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1 merchant and the law relating to principal and agent, estoppel,
laches,
2 fraud, misrepresentation, duress, coercion, mistake, insolvency,
or
3 other validating or invalidating cause, supplement its provisions.

4 § 281. Uniformity of application and construction. This article
shall
5 be applied and construed to effectuate its general purpose to
make
6 uniform the law with respect to the subject of this article among
states
7 enacting it.
8 § 281-a. Relation to electronic signatures in global and
national
9 commerce act. This article modifies, limits, or supersedes the
Electron-
10 ic Signatures in Global and National Commerce Act, 15 U.S.C.
Section
11 7001 et seq., but does not modify, limit, or supersede Section 101(c)
of
12 that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery
of
13 any of the notices described in Section 103(b) of that act, 15
U.S.C.
14 Section 7003(b).

15 § 3. Paragraph 5 of subdivision (c) of section 5205 of the civil
prac-
16 tice law and rules, as amended by chapter 93 of the laws of 1995,
is

17 amended to read as follows:

18 5. Additions to an asset described in paragraph two of this
subdivi-
19 sion shall not be exempt from application to the satisfaction of a
money
20 judgment if (i) made after the date that is ninety days before
the
21 interposition of the claim on which such judgment was entered, or
(ii)
22 deemed to be [~~fraudulent conveyances~~] voidable transactions under
arti-
23 cle ten of the debtor and creditor law.

24 § 4. Subdivision (g) of section 5519 of the civil practice law
and
25 rules, as added by chapter 184 of the laws of 1988, is amended to
read
26 as follows:

27 (g) Appeals in medical, dental or podiatric malpractice judgments.
In
28 an action for medical, dental or podiatric malpractice, if an appeal
is
29 taken from a judgment in excess of one million dollars and an
undertak-

30 ing in the amount of one million dollars or the limit of
insurance
31 coverage available to the appellant for the occurrence, whichever
is
32 greater, is given together with a joint undertaking by the appellant
and
33 any insurer of the appellant's professional liability that, during
the

34 period of such stay, the appellant will make no [~~fraudulent~~
~~conveyance~~

35 ~~without fair consideration~~] voidable transaction as described
in
36 [~~section two hundred seventy-three-a~~] article ten of the debtor
and
37 creditor law, the court to which such an appeal is taken shall stay
all
38 proceedings to enforce the judgment pending such appeal if it finds
that
39 there is a reasonable probability that the judgment may be reversed
or
40 determined excessive. In making a determination under this
subdivision,
41 the court shall not consider the availability of a stay pursuant
to
42 subdivision (a) or (b) of this section. Liability under such
joint
43 undertaking shall be limited to [~~fraudulent conveyances~~] voidable
trans-
44 actions made by the appellant subsequent to the execution of such
under-
45 taking and during the period of such stay, but nothing herein
shall
46 limit the liability of the appellant for [~~fraudulent conveyances~~]
voida-
47 ble transactions pursuant to article ten of the debtor and creditor
law
48 or any other law. An insurer that pays money to a beneficiary of
such a
49 joint undertaking shall thereupon be subrogated, to the extent of
the
50 amount to be paid, to the rights and interests of such beneficiary,
as a
51 judgment creditor, against the appellant on whose behalf the
joint
52 undertaking was executed.

53 § 5. Subparagraph 4 of paragraph (b) of section 7-3.1 of the
estates,
54 powers and trusts law, as amended by chapter 206 of the laws of 1998,
is
55 amended to read as follows:
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1 (4) Additions to an asset described in subparagraph one of this
para-
2 graph shall not be exempt from application to the satisfaction of
a
3 money judgment if (i) made after the date that is ninety days before
the
4 interposition of the claim on which such judgment was entered, or
(ii)
5 deemed to be [~~fraudulent conveyances~~] voidable transactions under
arti-
6 cle ten of the debtor and creditor law.

7 § 6. Paragraph 3 of subdivision 3-a of section 50 of the
workers'
8 compensation law, as amended by chapter 139 of the laws of 2008,
is

9 amended to read as follows:
10 (3) A member's participation in a group self-insurer shall not
relieve
11 it of its liability for compensation prescribed by this chapter
except
12 by the payment thereof by the group self-insurer or by itself.
Each
13 member shall be responsible, jointly and severally, for all
liabilities
14 of the group self-insurer provided for by this chapter occurring
during
15 its respective period of membership, and such liability shall attach
to
16 any recipient of a conveyance of assets made in violation of
subdivision
17 (a) of section two hundred [~~seventy-three~~] seventy-four of the
debtor
18 and creditor law. As between the employee and the group self-
insurer,
19 notice to or knowledge of the occurrence of the injury on the part
of
20 the member shall be deemed notice or knowledge, as the case may be,
on
21 the part of the group self-insurer; jurisdiction of the member
shall,
22 for the purpose of this chapter, be jurisdiction of the group self-
in-
23 surer and such group self-insurer shall in all things be bound by
and
24 subject to the orders, findings, decisions or awards rendered
against
25 the participating member for the payment of compensation under
the
26 provisions of this chapter. The insolvency or bankruptcy of a
partic-
27 ipating member shall not relieve the group self-insurer from the
payment
28 of compensation for injuries or death sustained by an employee
during
29 the time the member was a participant in such group self-insurer.
Notice
30 of termination of a participating member shall not be effective until
at
31 least ten days after notice of such termination, on a prescribed
form,
32 has been either filed in the office of the chair or sent by certified
or
33 registered letter, return receipt requested, and also served in
like
34 manner upon the member. In the event such termination is due to
a
35 member's failure to pay required contributions, such member's
termi-
36 nation shall not be rescinded more than three times.
37 § 7. This act shall take effect one hundred twenty days after it
shall

38 have become law, and shall apply to a transfer made or
obligation
39 incurred on or after such effective date, but shall not apply
to a
40 transfer made or obligation incurred before such effective date,
nor
41 shall it apply to a right of action that has accrued before such
effec-
42 tive date. For the foregoing purposes, a transfer is made and an
obli-
43 gation is incurred at the time provided in section 275 of the debtor
and
44 creditor law as added by section two of this act.