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Honorable Joseph L. Bruno
Majority Leader and President Pro Tem
New York State Senate

Honorable Sheldon Silver
Speaker, New York State Assembly

Re: New York's Fraudulent Transfer Law

Dear Sirs:

The Committee on Uniform State Laws and the Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York (the "Committees") respectfully recommend that the New York Legislature repeal New York's existing fraudulent transfer statute,¹ which is based on the antiquated Uniform Fraudulent Conveyance Act² ("UFCA"), and replace it with a statute based on the Uniform Fraudulent Transfer Act³ ("UFTA"). This letter summarizes the reasons for that recommendation.

Every year countless business transactions take place in New York and are governed by New York's fraudulent transfer law. Increasingly, courts have been required to analyze and ap-

¹ N.Y. DEBTOR AND CREDITOR LAW ("DCL") §§ 270-281 (McKinney 2000 & Supp. 2003).

² 7A U.L.A. 1 (1999 & Supp. 2002).

³ *Id.* at 266.

ply that law, especially in the context of the large number of bankruptcy cases filed over the past few years.⁴

New York's existing fraudulent transfer statute, which was enacted in 1925, is based on the UFCA, which was promulgated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") in 1918. The UFCA remains the source of only two states' fraudulent transfer laws.⁵

The UFTA was adopted by NCCUSL in 1984. It was drafted against the backdrop of the Uniform Commercial Code ("UCC") and draws from the Bankruptcy Code's modern fraudulent transfer provisions. The UFTA has been adopted by 43 states and the District of Columbia.

Thus, New York's enactment of a fraudulent transfer statute based on the UFTA would promote uniformity among the states and, in so doing, create a more predictable, and therefore more favorable, business environment. Uniformity is exceptionally desirable because choice of law issues arising with regard to fraudulent transfers are unusually uncertain and ambiguous. In addition, such enactment would promote uniformity with the Bankruptcy Code and, in so doing, enhance predictability by reducing the likelihood that a transaction would be treated differently for this purpose before and after the commencement of a bankruptcy case.

The Committees believe that the UFTA is superior to the UFCA. Both statutes provide for the avoidance of a transfer of property made by a person or an obligation incurred by a person if (1) the transfer was made or the obligation was incurred by the person with intent to hinder, delay or defraud the person's creditors or (2) the person was in a condition of financial stringency at the time of the transfer or incurrence and did not receive equivalent value in exchange for the property transferred or obligation incurred. The UFTA, however, is clearer, more consistent with other laws, and more modern and practical. Certain of the differences between the two statutes are summarized below.

Principal Differences between the UFTA and the New York UFCA

1. The UFTA contains a clear and uniform statute of limitations (§ 9)⁶ In the case of actual fraud, the statute of limitations is the later of four years after the transfer is made and one year after the transfer reasonably could have been discovered by the claimant. In the case of constructive fraud, the statute of limitations is four years after the transfer is made. The UFCA does not contain a statute of limitations, relying instead on other state law. In New York, the applicable limitations period is six years (CPLR § 213, subd. 1).

2. Unlike the UFCA, the UFTA (§ 6) defines when a transfer is made or obligation incurred for purposes of the statute, and thus clarifies when the transferor's financial condition and the value of consideration provided by the transferee are to be measured and when the statute of limitations begins to run. Under the UFTA, a transfer is made (1) when a transfer of non-*fixture* real property is perfected as against a good-faith purchaser and (2) when a transfer of another asset is perfected as against a judicial lien creditor. An oral obligation is incurred when it

⁴ State fraudulent transfer laws are applicable in bankruptcy cases because Section 544(b)(1) of the Bankruptcy Code authorizes a trustee to avoid transfers that are avoidable under non-bankruptcy law.

⁵ Maryland and New York are the only remaining states whose fraudulent transfer statutes are based on the UFCA. It also remains in effect in the U.S. Virgin Islands.

⁶ The statute of limitations in UFTA §9 extinguishes actions commenced after the prescribed limitations period has passed, including those commenced by governmental entities. It therefore rejects the holding of *U.S. v. Gleneagles Investment Co., Inc.*, 565 F. Supp. 556, 583 (M.D. Pa. 1983), *aff'd sub nom. U.S. v. Tabor Court Realty Corp.*, 803 F.2d 1288 (3d Cir. 1986), that such statutes of limitations do not apply to governmental entities in actions under federal law.

becomes effective between the parties, while a written obligation is incurred upon execution and delivery.

3. The UFTA cleans up and rationalizes the provisions of the UFCA that define how bad a transferor's financial condition must be in order to render a transfer for less than equivalent value susceptible to avoidance on the basis of constructive fraud. For example:

(a) The constructive fraud provisions of both the UFCA and the UFTA apply if the transferor is "insolvent." The definition of the term "insolvent" in the UFCA (§ 2(1)) confusingly includes both language of balance-sheet insolvency ("present fair salable value of [the transferor's] assets") and language suggestive of equity insolvency ("his probable liability on his existing debts as they become absolute and matured"). The UFTA revises the definition to be clearly and unequivocally a balance sheet concept (§ 2(a)). In addition to removing this important ambiguity, the UFTA definition of "insolvent" is very similar to the definition of that term in the Bankruptcy Code (§ 101(32)).

(b) It is notoriously difficult to ascertain (certainly before the fact) whether an entity is "insolvent" in the balance-sheet sense, based on fair valuations, at a given moment. The Bankruptcy Code addresses that difficulty in different ways for different purposes (*e.g.*, § 303(h)(1) [use of equity definition of insolvency for purposes of determining candidacy for involuntary bankruptcy], § 547(f) [for purposes of avoidance of preferences, a debtor is presumed to have been insolvent during the 90 days before the petition], § 553(b) [similar presumption for purposes of applying the setoff-preference provision]). The UFCA does not address this difficulty. The UFTA, by contrast, adds a rebuttable presumption that a transferor who is "not generally paying his debts as they become due" is insolvent in the balance sheet sense (§ 2(b)).

(c) The constructive fraud provisions of both the UFCA and the UFTA also apply if the transferor is insolvent in the equity sense at the time the transferor makes a transfer without receiving fair value in exchange. The UFCA definition of equity-sense insolvency is, however, purely subjective: it applies only if the transferor "intends or believes" that he will incur debts beyond his ability to repay (§ 6). Although this is similar to the definition contained in one of the alternative tests set forth in the Bankruptcy Code (§ 548(a)(1)(B)(ii)(III)), it is difficult to see why, as a policy matter, the constructive fraud provisions should not apply to a transfer for less than fair value by an unreasonably optimistic debtor who honestly lacks the requisite intent but who in objective fact cannot reasonably expect to be able to pay his debts. (Indeed, if equity-sense insolvency is defined in a purely subjective way, it is not clear why it is even necessary, as a debtor who makes a transfer for less than fair value knowing that he will not be able to pay his debts would seem likely to have actual intent to defraud his creditors.) The UFTA, like the Bankruptcy Code, rationalizes this provision by providing that a transferor is insolvent in the equity sense if he is unable to pay his debts as they become due, either in his subjective belief or as judged by the standard of objective reasonableness (§ 4(a)(ii)).

4. The UFTA omits the UFCA's provision (§ 8(a)) stating that every transfer from an insolvent partnership to a partner is fraudulent. That provision is unreasonably harsh insofar as it declares fraudulent a transfer in which the partner gave equivalent value to the partnership in exchange for the transferred property.

5. The "insider preference" rule created by the UFTA (§ 5(b)) provides for heightened scrutiny to transfers to insiders. This rule provides that a transfer is constructively fraudulent, even if reasonably equivalent value is given, where it is made (1) on account of an antece-

dent debt (2) by an insolvent transferor (3) to an insider who has reasonable cause to believe the transferor is insolvent. There is no analog to this provision in the UFCA (although it may be possible to avoid insider preferences under UFCA by manipulating the "good faith" element of the UFCA's definition of "fair consideration").

6. Like the UFCA (§ 7), the UFTA (§ 4(a)(1)) renders avoidable transfers and obligations made "with actual intent to hinder, delay, or defraud" creditors. The UFTA assists courts and parties to transactions in understanding the meaning of "actual intent" by providing (in § 4(b)) a nonexclusive list of eleven factors for courts to consider, namely whether (1) the transfer or obligation was to an insider; (2) the transferor 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 transferor had been sued or threatened with suit; (5) the transfer was of substantially all the transferor's assets; (6) the transferor absconded; (7) the transferor removed or concealed assets; (8) the value of the consideration received by the transferor was not reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (9) the transferor 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 transferor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the transferor. The UFCA provides no such guidance.

7. The UFTA eliminates the distinction in the UFCA (§ 3) between absolute transfers and the granting of a security interest. That distinction may have been meaningful in 1918, but it is not meaningful today.

8. The UFTA eliminates the UFCA provision (§ 3) stating, in effect, that a transfer of property by a person in a state of financial stringency is constructively fraudulent, even though the transferor received reasonably equivalent value in exchange, unless it is also shown that the transferee acted in good faith. This subjective good-faith requirement has been the source of considerable uncertainty.

9. The UFTA expands the remedies available to creditors of a debtor who has committed a fraudulent transfer. It provides (in § 7) that a creditor may (1) avoid the transfer, (2) attach the asset transferred or other property of the transferee or utilize other provisional remedies, (3) enjoin further disposition by the transferor or the transferee, or both, of the asset transferred or of other property, (4) appoint a receiver to take charge of the asset transferred or of other property of the transferee, or (5) be granted any other relief that the circumstances may require. A judgment creditor may also levy execution on the asset transferred or its proceeds.

10. The UFTA clarifies the defenses available to transferees in general and strengthens the defenses available to those who act in good faith (§ 8). If a transfer is fraudulent, the transferee is liable in an amount equal to the lesser of the value of the assets transferred or the amount of the creditor's claim. A transferee who acts in good faith and takes for reasonably equivalent value has an absolute defense to avoidance of a transfer, and a transferee who takes in good faith is protected, through a lien on the asset transferred or a reduction in liability, to the extent he gave value for the transfer.

Matters the Legislature Should Consider in Enacting UFTA as New York Law

The Committees believe that the UFTA is better suited to today's complex business transactions than the aging UFCA presently in force in New York. However, the Committees

recommend that, in enacting the UFTA in New York, the Legislature should take into account the following:

1. The Committees recommend that the Legislature alter the two UFTA provisions (§§ 3(b) and 8(e)) providing "safe harbors" from avoidance under §§ 4(a)(2) and 5 by combining them, expanding them to protect regularly conducted, noncollusive execution sales, and narrowing them to exclude UCC enforcement and execution-sale transactions in which an insider is the transferee from "safe harbor" protection. The Committees believe that insider transactions deserve fuller scrutiny than arm's length transactions that is not truncated by a "safe harbor" intended for the latter.⁷

2. The Committees recommend that the Legislature give serious consideration to retaining (with necessary conforming changes) existing DCL § 273-a, a non-uniform provision that permits the avoidance by a judgment creditor of a transfer made by its judgment debtor without fair consideration during the pendency of the litigation when the judgment debtor does not satisfy the judgment. This provision essentially substitutes proof of the failure of a judgment debtor to satisfy the judgment for proof of the judgment debtor's insolvency or of actual fraud. This provision has been construed as narrowly focused on aiding judgment creditors by relieving them of the sometimes vexing burden of proving either insolvency or actual fraud, without adverse consequences for legitimate transactions. It has also been criticized as unnecessary because transfers made to place assets beyond the reach of the plaintiff during the pendency of litigation will often be avoidable under the 'actual fraud' test of the UFTA, although perhaps only after risky delay and the incurrence of additional expense.

3. The Committees recommend that the Legislature give serious consideration to retaining (with necessary conforming and modernizing changes) existing DCL § 276-a, a non-uniform provision that requires the court to award attorney's fees to a successful plaintiff in an avoidance action or proceeding in which the debtor and the transferee of the avoided transfer acted with actual intent to hinder, delay or defraud a creditor.

Conclusion

By enacting the UFTA in New York, the Legislature would modernize New York's antiquated fraudulent conveyance laws and make New York law consistent with that of the vast majority of other states and the Bankruptcy Code. The result would be a welcome simplification of the law and an increase in certainty for debtors and creditors. The Committees therefore recommend that the Legislature proceed to enact the UFTA in New York (subject to the considerations described above) with all deliberate speed.

Our complete recommendation is set forth in the comparison chart that is annexed to this letter.

We would be glad to answer questions or otherwise assist in this valuable legislative effort. Please do not hesitate to contact Jayne Bigelsen, the Association's Director of Communications and Public Affairs, at (212) 382-6655 if we can be of assistance.

⁷ The Committees would have preferred to also exclude foreclosure sales and lease terminations in which an insider is the transferee from safe-harbor protection. However, we understand that a number of industries including real estate are concerned with potential ramifications of that suggestion. While we do not necessarily agree with that concern, because of the concerns raised, we do not include that recommendation in this letter. In addition, the policy basis for the safe harbor for foreclosure sales is thoroughly explored in BFP v. Resolution Trust Corp., 511 U.S. 531 (1994). That basis does not seem to support excluding insiders from safe-harbor protection.

**Text of Bill to Replace Debtor and Creditor Law ("DCL") §§ 270-281,
with the Replacement to be Contained in DCL Article 10:**

§ 1. Definitions.

As used in this [Act]:

(1) "Affiliate" means:

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

(A) as a fiduciary or agent without sole discretionary power to vote the securities;
or

(B) solely to secure a debt, if the person has not exercised the power to vote;

(ii) a corporation 20 percent or more of whose outstanding voting securities 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 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(A) as a fiduciary or agent without sole power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

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

(iv) 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 the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties 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:
 - (i) if the debtor is an individual,
 - (A) a relative of the debtor or of a general partner of the debtor;
 - (B) a partnership in which the debtor is a general partner;
 - (C) a general partner in a partnership described in clause (B); or
 - (D) a corporation of which the debtor is a director, officer, or person in control;
 - (ii) if the debtor is a corporation,
 - (A) a director of the debtor;
 - (B) an officer of the debtor;
 - (C) a person in control of the debtor;
 - (D) a partnership in which the debtor is a general partner;
 - (E) a general partner in a partnership described in clause (D); or
 - (F) a relative of a general partner, director, officer, or person in control of the debtor;
 - (iii) if the debtor is a partnership,
 - (A) a general partner in the debtor;
 - (B) a relative of a general partner in, or a general partner of, or a person in control of the debtor;
 - (C) another partnership in which the debtor is a general partner;
 - (D) a general partner in a partnership described in clause (C); or
 - (E) a person in control of the debtor;
 - (iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
 - (v) 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, 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 third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third 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.

§ 2. Insolvency.

(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 debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, 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 [Act].

(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.

§ 3. Value.

(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, but 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) 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.

§ 4. Transfers Fraudulent as to Present and Future Creditors.

(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:

(i) 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

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1), 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.

§ 5. Transfers Fraudulent as to Present Creditors.

(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.

§ 6. Transfers by Defendants.

Every transfer made by a debtor while the debtor is a defendant in an action for money damages or after the debtor has had a judgment in such an action docketed against the debtor is fraudulent as to the plaintiff in that action, without regard to the actual intent of the debtor, if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and, after final judgment for the plaintiff, fails to satisfy the judgment.

§ 7. When Transfer is Made or Obligation is Incurred.

For the purposes of this [Act]:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but 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 superior to the interest of the transferee; and

(ii) 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 [Act] that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this [Act], 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), 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:
 - (i) if oral, when it becomes effective between the parties; or
 - (ii) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

§ 8. Remedies of Creditors.

(a) In an action for relief against a transfer or obligation under this [Act], a creditor, subject to the limitations in Section 9, 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 any applicable procedure prescribed by the Civil Procedure Law and Rules; and
- (3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure,
 - (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (iii) 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.

§ 9. Defenses, Liability, and Protection of Transferee.

(a) A transfer or obligation is not voidable under Section 4(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 8(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount 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 who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) 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 [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) 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 4(a)(2), Section 5 or Section 6 if the transfer consists of or results from:

(1) a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of an interest of the debtor in an asset upon default under a mortgage or deed of trust;

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

(3) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code (excluding a purchase of collateral by an insider under Section 9-610 thereof or a transfer of collateral to an insider in full or partial satisfaction of an obligation under Section 9-620 thereof), or

(4) the regularly conducted, noncollusive enforcement of a money judgment in compliance with applicable law (excluding a transfer in which the transferee is an insider).

(f) A transfer is not voidable under Section 5(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.

§ 10. Extinguishment of Cause of Action.

A cause of action with respect to a fraudulent transfer or obligation under this [Act] is extinguished unless action is brought:

(a) under Section 4(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) under Section 4(a)(2) or 5(a), within 4 years after the transfer was made or the obligation was incurred;

(c) under Section 5(b), within one year after the transfer was made or the obligation was incurred; or

(d) under Section 6,

(1) in the case of a transfer made before the final judgment for the plaintiff mentioned therein became final, within the greater of four years after the transfer was made or two years after the judgment became final; and

(2) in the case of a transfer made after the final judgment for the plaintiff mentioned therein became final, within four years after the transfer was made.

§ 11. Burden of Proof.

A transfer made or obligation incurred by a debtor to or for the benefit of an insider shall be found to be fraudulent under Section 4(a)(1) if actual intent to hinder, delay, or defraud any creditor of the debtor is proven by a preponderance of the evidence. In all other cases under this [Act], the burden of proof shall be governed by the principles of the common law of this State.

§ 12. Attorneys' Fees in Action or Proceeding to Avoid Transfer Made with Intent to Defraud

In an action or special proceeding brought by a creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors to avoid a transfer made or obligation incurred by a debtor which is found to have been made or incurred by the debtor and received by the transferee or obligee with actual intent to hinder, delay or defraud a creditor (whether the creditor's claim arose before or after the transfer was made or the obligation was incurred), in which action or special proceeding the creditor, receiver, trustee, or assignee shall recover judgment, the court shall fix the reasonable attorney's fees of the creditor, receiver, trustee, or assignee in such action or special proceeding, and the creditor, receiver, trustee, or assignee shall have judgment therefor against the defendants therein in addition to the other relief granted by the judgment. The fee so fixed shall be without prejudice to any agreement, express or implied, between the creditor, receiver, trustee, or assignee and his attorney with respect to the compensation of such attorney.

§ 13. Supplementary Provisions.

Unless displaced by the provisions of this [Act], the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

§ 14. Uniformity of Application and Construction.

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

§ 15. Short Title.

This [Act] may be cited as the Uniform Fraudulent Transfer Act.

§ 16. Repeal.

Sections 270 through 281 of the Debtor and Creditor Law are repealed as of the effective date of this Act, provided that such Sections shall remain in effect thereafter as to transfers made and obligations incurred prior to such date.

§ 17. Effective Date.

This [Act] shall take effect on _____.

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Comparison of DCL, UFTA and Committees' Proposal

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p>In this article "assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets. (§ 270)</p>	<p>"Asset" means property of a debtor, but the term does not include:</p> <p>(i) property to the extent it is encumbered by a valid lien;</p> <p>(ii) property to the extent it is generally exempt under nonbankruptcy law; or</p> <p>(iii) 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. (§ 1(2))</p>	<p>Same as UFTA.</p>
<p>None.</p>	<p>"Property" means anything that may be the subject of ownership. (§ 1(10))</p>	<p>Same as UFTA.</p>
<p>"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or encumbrance. (§ 270)</p>	<p>"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. (§ 1(12))</p>	<p>Same as UFTA.</p>
<p>"Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent. (§ 270)</p>	<p>"Creditor" means a person who has a claim. (§ 1(4))</p>	<p>Same as UFTA.</p>
<p>"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent. (§ 270)</p>	<p>"Debt" means liability on a claim. (§ 1(5))</p>	<p>Same as UFTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	<p>"Affiliate" means:</p> <p>(i) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities, (A) as a fiduciary or agent without sole discretionary power to vote the securities; or (B) solely to secure a debt, if the person has not exercised the power to vote</p> <p>(ii) a corporation 20 percent or more of whose outstanding voting securities 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 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities, (A) as a fiduciary or agent without sole power to vote the securities; or (B) solely to secure a debt, if the person has not in fact exercised the power to vote;</p> <p>(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or</p> <p>(iv) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets. (§ 1(1))</p>	Same as UFTA.
None.	<p>"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. (§ 1(3))</p>	Same as UFTA.
None.	<p>"Debtor" means a person who is liable on a claim. (§ 1(6))</p>	Same as UFTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	<p>"Insider" includes:</p> <ul style="list-style-type: none"> (i) if the debtor is an individual, <ul style="list-style-type: none"> (A) a relative of the debtor or of a general partner of the debtor; (B) a partnership in which the debtor is a general partner; (C) a general partner in a partnership described in clause (B); or (D) a corporation of which the debtor is a director, officer, or person in control; (ii) if the debtor is a corporation, <ul style="list-style-type: none"> (A) a director of the debtor; (B) an officer of the debtor; (C) a person in control of the debtor; (D) a partnership in which the debtor is a general partner; (E) a general partner in a partnership described in clause (D); or (F) a relative of a general partner, director, officer, or person in control of the debtor; (iii) if the debtor is a partnership, <ul style="list-style-type: none"> (A) a general partner in the debtor; (B) a relative of a general partner in, or a general partner of, or a person in control of the debtor; (C) another partnership in which the debtor is a general partner; (D) a general partner in a partnership described in clause (C); or (E) a person in control of the debtor; (iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and (v) a managing agent of the debtor. (§ 1(7)) 	Same as UFTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	"Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree. (§ 1(11))	Same as UFTA.
None.	"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. (§ 1(8))	Same as UFTA.
None.	"Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. (§ 1(13))	Same as UFTA.
None.	"Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity. § 1(9))	Same as UFTA.
A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured. (§ 271, subd. 1)	(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. * * * (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 [Act].	Same as UFTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA") <i>(continued from previous)</i>	Proposed Statutory Language
<p>In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription. (§ 271, subd. 2)</p>	<p>(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. (§ 2(a), (b), (d) and (e))</p> <p>A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts. (§ 2(c))</p>	<p>Same as UFTA.</p>
<p>Fair consideration is given for property, or obligation,</p> <p>a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or</p> <p>b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained. (§ 272)</p>	<p>(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, but 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.</p> <p>(b) [subsection (b) is quoted together with § 8(e) below]</p> <p>(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. (§ 3)</p>	<p>(a) and (c): same as UFTA; (b): see Proposed Statutory Language together with § 8(e) below.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p>Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration. (§ 273)</p>	<p>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. (§ 5(a))</p>	<p>Same as UFTA.</p>
<p>Every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment. (§ 273-a)</p>	<p>None.</p>	<p>Recommended for serious consideration: Every transfer made by a debtor while the debtor is a defendant in an action for money damages or after the debtor has had a judgment in such an action docketed against the debtor is fraudulent as to the plaintiff in that action, without regard to the actual intent of the debtor, if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and, after final judgment for the plaintiff, fails to satisfy the judgment.</p>
<p>Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent. (§ 274)</p>	<p>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: * * * (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (i) 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 . . . (§ 4(a)(2)(i))</p>	<p>Same as UFTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p>Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors. (§ 275)</p>	<p>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:</p> <p>***</p> <p>(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:</p> <p>***</p> <p>(ii) intended to incur, or believed or reasonably should have believed that he [or she] would incur, debts beyond his [or her] ability to pay as they became due. (§ 4(a)(2)(ii))</p>	<p>Same as UFTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p>Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors. (§ 276)</p>	<p>(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:</p> <ol style="list-style-type: none"> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor . . . (b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether: <ol style="list-style-type: none"> (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. (§ 4(a)(1), (b)) 	<p>Same as UFTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p>Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred,</p> <p>a. To a partner, whether with or without a promise by him to pay partnership debts, or</p> <p>b. To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners. (§ 277)</p> <p>Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or immediately from such a purchaser,</p> <p>a. Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or</p> <p>b. Disregard the conveyance and attach or levy execution upon the property conveyed. (§ 278, subd. 1)</p> <p>Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,</p> <p>a. Restrain the defendant from disposing of his property.</p> <p>b. Appoint a receiver to take charge of the property,</p>	<p>None.</p> <p>(a) In an action for relief against a transfer or obligation under this [Act], a creditor, subject to the limitations in Section 8, may obtain:</p> <p>(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;</p> <p>[(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by [];</p> <p>(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure, (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;</p> <p>(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or</p> <p>(iii) any other relief the circumstances may require.</p> <p>(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. (§ 7)</p>	<p>Same as UFTA.</p> <p>Same as UFTA. Subsections (a)(2) and (a)(3)'s reference to "applicable rules of civil procedure" to refer to the CPLR.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p><i>(continued from previous)</i></p> <p>c. Set aside the conveyance or annul the obligation, or</p> <p>d. Make any order which the circumstances of the case may require. (§ 279)</p>	<p><i>(continued from previous)</i></p> <p>(a) A transfer or obligation is not voidable under Section 4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.</p> <p>(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:</p> <p>(1) the first transferee of the asset or the person for whose benefit the transfer was made; or</p> <p>(2) any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.</p> <p>(c) If the judgment under subsection (b) 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. (§ 8(a), (b), (c))</p>	
<p>A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment. (§ 278, subd 2))</p>	<p>Notwithstanding 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</p> <p>(1) a lien on or a right to retain any interest in the asset transferred;</p> <p>(2) enforcement of any obligation incurred; or</p> <p>(3) a reduction in the amount of the liability on the judgment. (§ 8(d))</p>	<p>Same as UFTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	<p>§ 3(b): For the purposes of Sections 4(a)(2) and 5, 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.</p> <p>§ 8(e): A transfer is not voidable under Section 4(a)(2) or Section 5 if the transfer results from:</p> <p>(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or</p> <p>(2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.</p>	<p>(e) A transfer is not voidable under Section 4(a)(2), Section 5 or Section 6 if the transfer consists of or results from:</p> <p>(1) a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of an interest of the debtor in an asset upon default under a mortgage or deed of trust;</p> <p>(2) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law;</p> <p>(3) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code (excluding a purchase of collateral by an insider under Section 9-610 thereof or a transfer of collateral to an insider in full or partial satisfaction of an obligation under Section 9-620 thereof), or</p> <p>(4) the regularly conducted, noncollusive enforcement of a money judgment in compliance with applicable law (excluding a transfer in which the transferee is an insider).</p>
In any case not provided for in this article the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern. (§ 280)	Unless displaced by the provisions of this [Act], the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions. (§ 10)	Same as UFTA.
This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. (§ 281)	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it. (§ 11)	Same as UFTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	<p>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. (§ 5(b))</p> <p>A transfer is not voidable under Section 5(b):</p> <ol style="list-style-type: none"> (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. (§ 8(f)) 	Same as UFTA.
None.	<p>For the purposes of this [Act]:</p> <ol style="list-style-type: none"> (1) a transfer is made: <ol style="list-style-type: none"> (i) with respect to an asset that is real property other than a fixture, but 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 superior to the interest of the transferee; and (ii) 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 [Act] that is superior to the interest of the transferee; 	Same as UFTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
<p>(continued from previous)</p> <p>(2) if applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this [Act], the transfer is deemed made immediately before the commencement of the action;</p> <p>(3) if applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee;</p> <p>(4) a transfer is not made until the debtor has acquired rights in the asset transferred;</p> <p>(5) an obligation is incurred:</p> <p>(i) if oral, when it becomes effective between the parties; or</p> <p>(ii) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. (§ 6)</p>	<p>A [claim for relief][cause of action] with respect to a fraudulent transfer or obligation under this [Act] is extinguished unless action is brought:</p> <p>(a) under Section 4(a)(1), within 4 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;</p> <p>(b) under Section 4(a)(2) or 5(a), within 4 years after the transfer was made or the obligation was incurred; or</p> <p>(c) under Section 5(b), within one year after the transfer was made or the obligation was incurred. (§ 9)</p>	<p>Same as UFTA except that—</p> <p>"cause of action," rather than "claim for relief," is used because that is the standard language used in the CPLR. (see, e.g., Rule 3211(a)); and</p> <p>a subsection (d) has been added to cover Section 6, as follows:</p> <p>(d) under Section 6, (1) in the case of a transfer made before the final judgment for the plaintiff mentioned therein became final, within the greater of four years after the transfer was made or two years after the judgment became final; and (2) in the case of a transfer made after the final judgment for the plaintiff mentioned therein became final, within four years after the transfer was made.</p>
<p>None. (Actions under the DCL are governed by CPLR § 213 (six years).)</p>	<p>(continued from previous)</p> <p>(2) if applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this [Act], the transfer is deemed made immediately before the commencement of the action;</p> <p>(3) if applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee;</p> <p>(4) a transfer is not made until the debtor has acquired rights in the asset transferred;</p> <p>(5) an obligation is incurred:</p> <p>(i) if oral, when it becomes effective between the parties; or</p> <p>(ii) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. (§ 6)</p>	<p>Same as UFTA except that—</p> <p>"cause of action," rather than "claim for relief," is used because that is the standard language used in the CPLR. (see, e.g., Rule 3211(a)); and</p> <p>a subsection (d) has been added to cover Section 6, as follows:</p> <p>(d) under Section 6, (1) in the case of a transfer made before the final judgment for the plaintiff mentioned therein became final, within the greater of four years after the transfer was made or two years after the judgment became final; and (2) in the case of a transfer made after the final judgment for the plaintiff mentioned therein became final, within four years after the transfer was made.</p>

New York Debtor and Creditor Law ("DCCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	This [Act] may be cited as the Uniform Fraudulent Transfer Act. (§ 12)	Same as UFTA.
None.	The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed: (§ 13)	Sections 270 through 281 of the Debtor and Creditor Law are repealed as of the effective date of this Act, provided that such Sections shall remain in effect thereafter as to transfers made and obligations incurred prior to such date.
<p>In an action or special proceeding brought by a creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors to set aside a conveyance by a debtor, where such conveyance is found to have been made by the debtor and received by the transferee with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, in which action or special proceeding the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors shall recover judgment, the justice or surrogate presiding at the trial shall fix the reasonable attorney's fees of the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors in such action or special proceeding, and the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors shall have judgment therefor against the debtor and the transferee who are defendants in addition to the other relief granted by the judgment. The fee so fixed shall be without prejudice to any agreement, express or implied, between the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors and his attorney with respect to the compensation of such attorney. (§ 276-a)</p>	None.	<p>Recommended for serious consideration:</p> <p>In an action or special proceeding brought by a creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors to avoid a transfer made or obligation incurred by a debtor which is found to have been made or incurred by the debtor and received by the transferee or obligee with actual intent to hinder, delay or defraud a creditor (whether the creditor's claim arose before or after the transfer was made or the obligation was incurred), in which action or special proceeding the creditor, receiver, trustee, or assignee shall recover judgment, the court shall fix the reasonable attorney's fees of the creditor, receiver, trustee, or assignee in such action or special proceeding, and the creditor, receiver, trustee, or assignee shall have judgment therefor against the defendants therein in addition to the other relief granted by the judgment. The fee so fixed shall be without prejudice to any agreement, express or implied, between the creditor, receiver, trustee, or assignee and his attorney with respect to the compensation of such attorney.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Fraudulent Transfer Act ("UFTA")	Proposed Statutory Language
None.	None.	A transfer made or obligation incurred by a debtor to or for the benefit of an insider shall be found to be fraudulent under Section 4(a)(1) if actual intent to hinder, delay, or defraud any creditor of the debtor is proven by a preponderance of the evidence. In all other cases under this [Act], the burden of proof shall be governed by the principles of the common law of this State.
None.	None.	This [Act] shall take effect on ____.
Estates, Powers and Trust Law §§ 13-3.1, 13-3.2(b); Insurance Law § 3212(e)(1) and Social Service Law § 461-f, all of which refer to DCL Article 10, the article in which §§ 270-281 are contained		No change if the UFTA is contained in Article 10-- otherwise, conforming changes.

New York has always had laws giving creditors civil remedies in connection with asset transfers by their debtors that are actually or constructively fraudulent, such laws having been part of English common law since the Elizabethan Age. A codification of such laws promulgated in 1918--the Uniform Fraudulent Conveyance Act ("UFCA")--was adopted by many states (New York in 1925). By the 1980's, however, the UFCA had become seriously outdated relative to extraordinary changes in business and commerce and substantial changes in bankruptcy and other commercial laws.

In 1984 the National Conference of Commissioners on Uniform State Laws promulgated a complete revision entitled the Uniform Fraudulent Transfer Act ("UFTA"), and it has been adopted by more than 40 states. The bill enacts the UFTA in New York with minor adaptations.

The UFTA is superior to the UFCA because it adapts the law to modern commercial practices and harmonizes fraudulent transfer law to related bodies of law (principally the Uniform Commercial Code and the federal Bankruptcy Code). Its adoption in New York would promote uniformity with the laws of the vast majority of other states, which is vitally important in an era when so many commercial and financial transactions are interstate (if not international).

The bill also retains and modernizes two non-uniform provisions that have been part of New York's law of fraudulent transfers for many decades.