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SB-161 Uniform Fraudulent Transfer Act. (2015-2016)

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Senate Bill No. 161

CHAPTER 44

An act to amend Sections 3439, 3439.01, 3439.02, 3439.04, 3439.05, 3439.06, 3439.07, 3439.08, 3439.09, 3446, and 3447 of, to amend the heading of Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of, to amend the heading of Chapter 3 (commencing with Section 3445) of Title 2 of Part 2 of Division 4 of, to amend the heading of Title 2 (commencing with Section 3439) of Part 2 of Division 4 of, to amend and renumber Sections 3439.11 and 3439.12 of, and to amend, renumber, and add Section 3439.10 of, the Civil Code, to amend Sections 5420, 7420, 15905.02, 15911.27, 17704.03, 17711.08, and 18640 of the Corporations Code, to amend Sections 283 and 9653 of the Probate Code, and to amend Section 2104 of the Public Utilities Code, relating to civil law.

[Approved by Governor July 02, 2015. Filed with Secretary of State July 02, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 161, Vidak. Uniform Fraudulent Transfer Act.

The Uniform Fraudulent Transfer Act, based in part on the model Uniform Fraudulent Transfer Act, generally establishes the conditions under which a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, and sets forth the remedies of a creditor with respect to a fraudulent transfer or obligation, including, but not limited to, voiding the transfer. The act defines terms for its purposes.

This bill would rename the act the Uniform Voidable Transactions Act and would revise the act to adopt certain provisions proposed by the 2014 Uniform Voidable Transactions Act, which is based upon the Uniform Fraudulent Transfer Act, both of which were promulgated by the Uniform Law Commission. This bill would specify the burden of proof in making and defending a claim for relief and the basis for determining the governing law for a claim for relief under the act. This bill would modify definitions applicable to the act, would remove a definition of insolvency relating to a partnership debtor, and would add new definitions, including, but not limited to, definitions of "record" and "sign." This bill would replace the term "fraudulent" with the term "voidable," as specified. This bill would limit the applicability of the modifications to the act proposed by this bill to a right of action that accrued, transfer made, or obligation incurred on or after the effective date of this bill.

This bill would revise cross-references to the act and would make conforming changes to related provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The heading of Title 2 (commencing with Section 3439) of Part 2 of Division 4 of the Civil Code is amended to read:

TITLE 2. VOID AND VOIDABLE TRANSFERS AND UNDERTAKINGS

SEC. 2. The heading of Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code is amended to read:

CHAPTER 1. Uniform Voidable Transactions Act

SEC. 3. Section 3439 of the Civil Code is amended to read:

3439. This chapter may be cited as the Uniform Voidable Transactions Act.

SEC. 4. Section 3439.01 of the Civil Code is amended to read:

3439.01. As used in this chapter the following definitions are applicable:

(a) "Asset" means property of a debtor, but the term does not include the following:

(1) Property to the extent it is encumbered by a valid lien.

(2) Property to the extent it is generally exempt under nonbankruptcy law.

(3) 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.

(b) "Claim," except as used in "claim for relief," 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.

(c) "Creditor" means a person that has a claim, and includes an assignee of a general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, of a debtor.

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

(e) "Debtor" means a person that is liable on a claim.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) "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.

(h) "Organization" means a person other than an individual.

(i) "Person" means an individual, partnership, corporation, limited liability company, association, government or governmental subdivision, instrumentality or agency, business trust, estate, trust, business or nonprofit entity, or other legal entity.

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

(k) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(l) "Sign" means, with present intent to authenticate or adopt a record, to either (1) execute or adopt a tangible symbol, or (2) attach to or logically associate with the record an electronic symbol, sound, or process.

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

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

SEC. 5. Section 3439.02 of the Civil Code is amended to read:

3439.02. (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving

that the nonexistence of insolvency is more probable than its existence.

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

(d) 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.

SEC. 6. Section 3439.04 of the Civil Code is amended to read:

3439.04. (a) A transfer made or obligation incurred by a debtor is voidable 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 as follows:

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

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

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

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

(b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

(1) Whether the transfer or obligation was to an insider.

(2) Whether the debtor retained possession or control of the property transferred after the transfer.

(3) Whether the transfer or obligation was disclosed or concealed.

(4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(5) Whether the transfer was of substantially all the debtor's assets.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether 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) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

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

SEC. 7. Section 3439.05 of the Civil Code is amended to read:

3439.05. (a) A transfer made or obligation incurred by a debtor is voidable 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 creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

SEC. 8. Section 3439.06 of the Civil Code is amended to read:

3439.06. For the purposes of this chapter:

(a) A transfer is made:

(1) 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 which 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

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

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

(c) If applicable law does not permit the transfer to be perfected as provided in subdivision (a), the transfer is made when it becomes effective between the debtor and the transferee.

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

(e) An obligation is incurred:

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

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

SEC. 9. Section 3439.07 of the Civil Code is amended to read:

3439.07. (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 3439.08, may obtain:

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

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedures described in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure, or as may otherwise be available under applicable law.

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

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

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

(C) Any other relief the circumstances may require.

(b) If a creditor has commenced an action on a claim against the debtor, the creditor may attach the asset transferred or other property of the transferee if the remedy of attachment is available in the action under applicable law and the property is subject to attachment in the hands of the transferee under applicable law.

(c) If a creditor has obtained a judgment on a claim against the debtor, the creditor may levy execution on the asset transferred or its proceeds.

(d) A creditor who is an assignee of a general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, may exercise any and all of the rights and remedies specified in this section if they are available to any one or more creditors of the assignor who are beneficiaries of the assignment, and, in that event (1) only to the extent the rights or remedies are so available and (2) only for the benefit of those creditors whose rights are asserted by the assignee.

SEC. 10. Section 3439.08 of the Civil Code is amended to read:

3439.08. (a) A transfer or obligation is not voidable under paragraph (1) of subdivision (a) of Section 3439.04, against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of subdivision (a) of Section 3439.07, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subdivision (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the following:

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

(B) An immediate or mediate transferee of the first transferee, other than either of the following:

(i) A good faith transferee that took for value.

(ii) An immediate or mediate good faith transferee of a person described in clause (i).

(2) Recovery pursuant to paragraph (1) of subdivision (a), or subdivision (b), or subdivision (c) of Section 3439.07 of or from the asset transferred or its proceeds, or other property of the transferee, as applicable, by levy or otherwise, is available only against a person described in subparagraph (A) or (B) of paragraph (1).

(c) If the judgment under subdivision (b) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

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

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

(2) Enforcement of an obligation incurred.

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

(e) A transfer is not voidable under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05 if the transfer results from either of the following:

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

(2) Enforcement of a lien in a noncollusive manner and in compliance with applicable law, including Division 9 (commencing with Section 9101) of the Commercial Code, other than a retention of collateral under Sections 9620 and 9621 of the Commercial Code and other than a voluntary transfer of the collateral by the debtor to the lienor in satisfaction of all or part of the secured obligation.

(f) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subdivision (a), (d), or (e) has the burden of proving the applicability of that subdivision.

(2) Except as otherwise provided in paragraph (3) or (4), the creditor has the burden of proving each applicable element of subdivision (b) or (c).

(3) The transferee has the burden of proving the applicability to the transferee of subparagraph (B) of paragraph (1) of subdivision (b).

(4) A party that seeks adjustment under subdivision (c) has the burden of proving the adjustment.

(g) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

SEC. 11. Section 3439.09 of the Civil Code is amended to read:

3439.09. A cause of action with respect to a transfer or obligation under this chapter is extinguished unless action is brought pursuant to subdivision (a) of Section 3439.07 or levy made as provided in subdivision (b) or (c) of Section 3439.07:

(a) Under paragraph (1) of subdivision (a) of Section 3439.04, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(b) Under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05, not later than four years after the transfer was made or the obligation was incurred.

(c) Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.

SEC. 12. Section 3439.10 of the Civil Code is amended and renumbered to read:

3439.12. Unless displaced by the provisions of this chapter, 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.

SEC. 13. Section 3439.10 is added to the Civil Code, to read:

3439.10. (a) In this section, the following rules determine a debtor's location:

- (1) A debtor who is an individual is located at the individual's principal residence.
- (2) A debtor that is an organization and has only one place of business is located at its place of business.
- (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim in the nature of a claim under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

SEC. 14. Section 3439.11 of the Civil Code is amended and renumbered to read:

3439.13. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SEC. 15. Section 3439.12 of the Civil Code is amended and renumbered to read:

3439.14. (a) The changes to this chapter made by the act adding this subdivision apply only to a right of action that accrued, transfer made, or obligation incurred, on or after the effective date of that act.

(b) This chapter, and the other changes in the law made by Chapter 383 of the Statutes of 1986, apply only to transfers made or obligations incurred before the effective date of the act that added subdivision (a) and on or after January 1, 1987. As to transfers made or obligations incurred prior to January 1, 1987, the law in effect at the time the transfer was made or the obligation was incurred shall apply.

(c) Section 3439.06 shall determine the date that a transfer was made or obligation incurred.

(d) The provisions of this chapter, insofar as they are substantially the same as the provisions of this chapter in effect on December 31, 2015, shall be construed as restatements and continuations, and not as new enactments.

SEC. 16. The heading of Chapter 3 (commencing with Section 3445) of Title 2 of Part 2 of Division 4 of the Civil Code is amended to read:

CHAPTER 3. Undertaking in Voidable Transfer Action

SEC. 17. Section 3446 of the Civil Code is amended to read:

3446. (a) In an action by a creditor for relief against a transfer or obligation under Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 on the ground that the transfer or obligation is voidable as to the creditor, the transferee may give an undertaking as provided in this chapter.

(b) If an undertaking is given as provided in this chapter, the transferee may sell, encumber, transfer, convey, mortgage, pledge, or otherwise dispose of the property or obligation, or a part thereof, and the purchaser, encumbrancer, transferee, mortgagee, grantee, or pledgee of the property or obligation takes, owns, holds, and possesses the property or obligation unaffected by the action and any judgment that is rendered in the action.

SEC. 18. Section 3447 of the Civil Code is amended to read:

3447. The undertaking shall be conditioned that, if it is determined in the action that the transfer or obligation was voidable as to the creditor, the transferee will pay to the creditor the lesser of the following amounts:

- (a) The value of the property or obligation as estimated in the undertaking.
- (b) The amount determined in the action to be due and owing to the creditor by the person who transferred the property or incurred the obligation.

SEC. 19. Section 5420 of the Corporations Code is amended to read:

5420. (a) Any person who receives any distribution is liable to the corporation for the amount so received by such person with interest thereon at the legal rate on judgments until paid.

(b) Suit may be brought in the name of a corporation by a creditor, a director, the Attorney General, or, subject to meeting the requirements of Section 5710, a member. In any such action in addition to the remedy provided in subdivision (a), the court may award punitive damages for the benefit of the corporation against any director, officer, member or other person who with intent to defraud the corporation caused, received or aided and abetted in the making of any distribution.

(c) Any person sued under this section may implead all other persons liable under this section and may in the absence of fraud by a moving party compel contribution, either in that action or in an independent action against persons not joined in the action.

(d) This section shall not affect any liability which any person may have under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 20. Section 7420 of the Corporations Code is amended to read:

7420. (a) Any person who with knowledge of facts indicating the impropriety thereof receives any distribution, including a payment in redemption of a membership, prohibited by this chapter is liable to the corporation for the amount so received by the person with interest thereon at the legal rate on judgments until paid.

(b) Any person who with knowledge of facts indicating the impropriety thereof receives any distribution, including a payment in redemption of a membership, prohibited by this chapter is liable to the corporation for the benefit of the head organization, or of all of the creditors entitled to institute an action under subdivision (c), for the amount so received by the person with interest thereon at the legal rate on judgments until paid, but not exceeding the obligations of the corporation owed to the head organization at the time of the violation, or the liabilities of the corporation owed to nonconsenting creditors at the time of the violation, as the case may be.

(c) Suit may be brought in the name of the corporation to enforce the liability (1) to creditors arising under subdivision (b) for a violation of Section 7411 or 7412 against any or all persons liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the distribution and who have not consented thereto, whether or not they have reduced their claims to judgment, or (2) to the head organization arising under subdivision (b) for a violation of Section 7413 against any or all persons liable by any head organization which pursuant to the corporation's articles is entitled to a distribution of assets upon dissolution.

(d) Any person sued under subdivision (b) may implead all other persons liable under subdivision (b) and may in the absence of fraud by the moving party compel contribution, either in that action or in an independent action against persons not joined in that action.

(e) Nothing contained in this section affects any liability which any person may have under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 21. Section 15905.02 of the Corporations Code is amended to read:

15905.02. (a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(b) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to the value of that portion, as stated in the required information, of the stated contribution which has not been made.

(c) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subdivision (a), without notice of any compromise under this subdivision, may enforce the original obligation.

(d) A partnership agreement may provide that the interest of a partner who fails to make any contribution or other payment that the partner is required to make will be subject to specific remedies for, or specific consequences of, the failure. A provision shall be enforceable in accordance with its terms unless the partner seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. The specific remedies or consequences may include loss of voting, approval, or other rights, loss of the partner's ability to actively participate in the

management and operations of the partnership, liquidated damages, or a reduction of the defaulting partner's economic rights. The reduction of the defaulting partner's economic rights may include one or more of the following provisions:

- (1) Diluting, reducing or eliminating the defaulting partner's proportionate interest in the partnership.
- (2) Subordinating the defaulting partner's interest in the partnership to that of nondefaulting partners.
- (3) Permitting a forced sale of the partnership interest.
- (4) Permitting the lending or contribution by other partners of the amount necessary to meet the defaulting partner's commitment.
- (5) Adjusting the interest rates or other rates of return, preferred, priority, or otherwise, with respect to contributions by or capital accounts of the other partners.
- (6) Fixing the value of the defaulting partner's interest in the partnership by appraisal, formula and redemption, or sale of the defaulting partner's interest in the partnership at a percentage of that value.
- (7) Nothing in this section shall be construed to affect the rights of third-party creditors of the partnership to seek equitable remedies nor any rights existing under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 22. Section 15911.27 of the Corporations Code is amended to read:

15911.27. To the extent that the payment to dissenting limited partners of the fair market value of their dissenting interests would require the dissenting limited partners to return such payment or a portion thereof by reason of Section 15905.09 or the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then that payment or portion thereof shall not be made and the dissenting limited partners shall become creditors of the limited partnership for the amount not paid, together with interest thereon at the legal rate on judgments until the date of payment, but subordinate to all other creditors in any proceeding relating to the winding up and dissolution of the limited partnership, such debt to be payable when permissible.

SEC. 23. Section 17704.03 of the Corporations Code is amended to read:

17704.03. (a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution that has not been made, at the option of the limited liability company.

(b) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company shall not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

(c) A creditor of a limited liability company that extends credit or otherwise acts in reliance on an obligation described in subdivision (a) may enforce the obligation.

(d) Nothing in this section shall be construed to affect the rights of third-party creditors of the limited liability company to seek equitable remedies or any rights existing under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 24. Section 17711.08 of the Corporations Code is amended to read:

17711.08. To the extent that the payment to dissenting members of the fair market value of their dissenting interests would require the dissenting members to return payment or a portion of the payment by reason of Section 17711.09 or the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then that payment or portion thereof shall not be made and the dissenting members shall become creditors of the limited liability company for the amount not paid, together with interest thereon at the legal rate on judgments until the date of payment, but subordinate to all other creditors in any proceeding relating to the winding up and dissolution of the limited liability company, such debt to be payable when permissible.

SEC. 25. Section 18640 of the Corporations Code is amended to read:

18640. Nothing in this chapter limits application of the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 26. Section 283 of the Probate Code is amended to read:

283. A disclaimer is not a voidable transfer by the beneficiary under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

SEC. 27. Section 9653 of the Probate Code is amended to read:

9653. (a) On application of a creditor of the decedent or the estate, the personal representative shall commence and prosecute an action for the recovery of real or personal property of the decedent for the benefit of creditors if the personal representative has insufficient assets to pay creditors and the decedent during lifetime did any of the following with respect to the property:

(1) Made a conveyance of the property, or any right or interest in the property, that is voidable as to creditors under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

(2) Made a gift of the property in view of impending death.

(3) Made a direction to transfer a vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, truck camper, or floating home to a designated beneficiary on the decedent's death pursuant to Section 18102.2 of the Health and Safety Code, or Section 5910.5 or 9916.5 of the Vehicle Code, and the property has been transferred as directed.

(b) A creditor making application under this section shall pay such part of the costs and expenses of the suit and attorney's fees, or give an undertaking to the personal representative for that purpose, as the personal representative and the creditor agree, or, absent an agreement, as the court or judge orders.

(c) The property recovered under this section shall be sold for the payment of debts in the same manner as if the decedent had died seized or possessed of the property. The proceeds of the sale shall be applied first to payment of the costs and expenses of suit, including attorney's fees, and then to payment of the debts of the decedent in the same manner as other property in possession of the personal representative. After all the debts of the decedent have been paid, the remainder of the proceeds shall be paid to the person from whom the property was recovered. The property may be sold in its entirety or in such portion as necessary to pay the debts.

SEC. 28. Section 2104 of the Public Utilities Code is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Voidable Transactions Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided. All fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall become operative on January 1, 2014.