

The Fraudulent Preferences Act

being

Chapter F-21 of *The Revised Statutes of Saskatchewan, 1978*
(effective February 26, 1979).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER F-21

An Act respecting Fraudulent or Preferential Transfers

Short title

1 This Act may be cited as *The Fraudulent Preferences Act*.

Interpretation

2 In this Act “**court**” means the Court of Queen’s Bench for Saskatchewan.

R.S.S. 1978, c.F-21, s.2.

Transfers to defeat creditors

3 Subject to sections 8, 9, 10 and 11 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

R.S.S. 1978, c.F-21, s.3.

Transfers to prefer creditors

4 Subject to sections 8, 9, 10 and 11 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency to or for a creditor, with intent to give that creditor preference over his other creditors or over any one or more of them, is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

R.S.S. 1978, c.F-21, s.4.

Transfers having effect of preference

5 Subject to sections 8, 9, 10 and 11 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in a bank, company or corporation, or of any other property real or personal, made to or for a creditor by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency, and which has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, is void in and with respect to any action or proceeding that within sixty days thereafter is brought, had or taken to impeach or set aside that transaction, as against the creditor or creditors injured, delayed, prejudiced or postponed.

R.S.S. 1978, c.F-21, s.5.

Transactions deemed preferential

6 A transaction shall be deemed to be one that has the effect of giving a creditor a preference over other creditors, within the meaning of section 5, if by that transaction a creditor is given or realizes or is placed in a position to realize payment, satisfaction or security for the debtor's indebtedness to him or a portion thereof greater proportionately than could be realized by or for the unsecured creditors generally of the debtor or for the unsecured portion of his liabilities out of the assets of the debtor left available and subject to judgment, execution, attachment or other process; and such effect shall not be deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure; and no pressure by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, shall avail to protect the transaction except as provided by sections 8 and 11, but independently of the intent with which the transaction was entered into the preferential effect or result of the transaction impeached shall govern.

R.S.S. 1978, c.F-21, s.6.

"Creditor" to include surety and endorser

7 In sections 4, 5 and 6 "creditor" and "creditors" shall be deemed to include a surety and the endorser of a promissory note or bill of exchange who would, upon payment by him of the debt, promissory note or bill of exchange in respect of which the suretyship was entered into or such endorsement was given, become a creditor of the person giving the preference within the meaning of those sections, and those words shall also include a *cestui que trust* or other person to whom liability is equitable only.

R.S.S. 1978, c.F-21, s.7.

Bona fide sales protected

8 Nothing in sections 3, 4, 5, 6 and 7 applies to a *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties, nor to a payment of money to a creditor, nor to a *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind as above mentioned that is made in consideration of a present actual *bona fide* payment in money or by way of security for a present actual *bona fide* advance of money, or that is made in consideration of a present actual *bona fide* sale or delivery of goods or other property:

Provided that the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

R.S.S. 1978, c.F-21, s.8.

Transfer of consideration for sale

9 In case of a valid sale of goods, securities or property and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor under circumstances that would render void the payment or transfer by the debtor personally and directly, the payment or transfer, though valid as respects the purchaser, is void as respects the creditor to whom it is made.

R.S.S. 1978, c.F-21, s.9.

Security given up upon void payment

10 If a payment has been made that is void under this Act and a valuable security has been given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment.

R.S.S. 1978, c.F-21, s.10.

Exchange of securities protected

11 Nothing in this Act shall affect any payment of money to a creditor who by reason or on account of the payment has lost or been deprived of or has in good faith given up a valid security that he held for the payment of the debt so paid, unless the value of the security is restored to the creditor, or the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors, nor shall anything in this Act invalidate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business and pay his debts in full.

R.S.S. 1978, c.F-21, s.11.

Suit for rescission of void transactions

12(1) One or more creditors may, for the benefit of creditors generally or for the benefit of such creditors as have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of or to have declared void agreements, deeds, instruments or other transactions made or entered into in fraud of creditors or in violation of this Act or thereby declared void, and if an amendment of the statement of claim is made the amendment shall relate back to the commencement of the action for the purpose of the time limited by section 5.

(2) In an action under this section the court may direct delivery of any property in question to a sheriff or a receiver and may order a sale thereof and such distribution of the proceeds as seems equitable through a sheriff or receiver or otherwise as seems proper.

(3) In case of a transaction void under this Act by reason of having been entered into with intent to give a preference or having the effect of giving a preference, the subject matter shall not be seizable or attachable or liable to sale for the satisfaction, according to priorities otherwise prevailing, of judgments, executions, attachments or other process, but the court shall have and exercise jurisdiction to realize the same for the benefit of all the creditors and to distribute the proceeds among them rateably and proportionately.

R.S.S. 1978, c.F-21, s.12.

Recovery of proceeds of property fraudulently transferred

13(1) In the case of a gift, conveyance, assignment or transfer of property real or personal that in law is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made has sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds or the amount thereof, whether further disposed of or not, may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and the right to seize and recover shall exist in favour of all creditors of those debtors.

(2) Where the proceeds are of a character seizable under execution they may be seized under the execution of any creditor and shall be distributable among creditors under *The Creditors' Relief Act*.

(3) Whether the proceeds are or are not of a character seizable under execution, an action may be brought therefor or to recover the amount thereof by a creditor, whether a judgment creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the proceeds or the amount thereof available for the general benefit of the creditors.

(4) This section does not apply as against innocent purchasers of such property.