# HB 2330 STAFF MEASURE SUMMARY

## House Committee On Judiciary

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**Meeting Dates:** 1/19, 1/26

### WHAT THE MEASURE DOES:

Clarifies that non-fraudulent transfers can still be covered and replaces the word "fraudulent" with "voidable." Specifies that creditors bear the burden of proof by a preponderance of the evidence, except as to defenses. Implements a predictable choice -of-law rule that establishes that a claim for relief is governed by the local law of the jurisdiction in which the debtor is located at the time the transfer is made or obligation is incurred. Establishes the criteria to determine a debtor's location. Modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, but does not affect the consumer disclosures portion of the Act. Establishes that a transfer is not voidable if: the insider gave new value to or for the benefit of the debtor after the transfer was made, unless it was secured by an unavoidable lean; the transfer was made in the ordinary course of business of the debtor; or the transfer was 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 earlier debt for the debtor. Certifies that the Uniform Voidable Transfer Act (UVTA) applies only to transfers made after the effective date of the Act.

*Revenue: No revenue impact*

### ISSUES DISCUSSED:

- Create uniformity between the neighboring states.
- Whether when adopting Uniform Law Commission language any Oregon-specific changes will be made.
- Allows certain transaction that are not fraudulent to be voidable in certain situations.

### EFFECT OF AMENDMENT:

No amendment.

### BACKGROUND:

Oregon enacted the UFTA in 1985. However, the Act's use of the words "fraudulent" and "fraud" for covered transactions indicate that the transactions must involve blameworthy intent. The Act does not specify which party, transferee or creditor, bears the burden of proof, and there is uncertainty of which state's or nation's comparable statute would apply in a cross-border situation.

The ULC is a is a non-partisan, nonprofit created in 1892. It is comprised of state commissioners from each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands to draft uniform laws for each state. Most jurisdictions provide for their commission by statute. ORS 172.010 covers Oregon's commission. The ULC promulgated the language for the UVTA, which amends the UFTA. Twenty-two states, including Washington state, California, and Idaho have adopted the model language since the ULC drafted the amendment in 2014. HB 2330 models language from the Uniform Law Commission (ULC) that amends the Uniform Fraudulent Transfer Act (UFTA) to the Uniform Voidable Transactions Act (UVTA).

House Bill 2330 seeks to clarify that non-fraudulent transfers are included in the act and are therefore voidable, specifies that creditors bear the burden of proof, except as to defenses, and implements a choice-of-law rule.