House Research
Act Summary

CHAPTER: 151 (H.F. 1384/S.F. 1084) **SESSION:** 2012 Regular Session

TOPIC: Clawbacks of fraudulent transfers to charities

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Overview

This act deals with what are called "clawbacks." That term refers to an attempt to "undo" a transfer of money or other property to an individual or entity, when the person doing the transfer was insolvent or obtained the money or other property fraudulently. In other words, the person transferred money or other property to which someone else had a stronger right, either as a creditor or a victim of fraud. This act deals with fraudulent transfers of gifts to charitable organizations. The act limits the rights of the victims of fraudulent transfers to recover those transfers from the charitable organizations. Charitable organizations are currently faced with "clawback" claims made by creditors of the donor or other victims of fraud, in which the victims are requesting charities to turn over to the victims gifts made to the charities by individuals who acquired the money or another assets from the victims through fraud, or who were insolvent and owed the victims money at the time of the gift. The act amends Minnesota's Uniform Fraudulent Transfers Act (Minnesota Statutes, sections 513.41 to 513.51) which was enacted in 1987.

1 **Definitions.** Amends the definition of "transfer" to describe certain types of transfers to charitable organizations that are not subject to clawback. These changes apply to gifts made to the three types of organizations described in section 170(c)(1), (2), or (3) of the Internal Revenue Code as follows:

(1) governmental entities, but only if the gift was made for exclusively public purposes;

(2) organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; to foster national or international amateur sports competition; or to prevent cruelty to children or animals; and

(3) posts or organizations of war veterans, including their related auxiliary units, societies, trusts, and foundations.

The new language excludes from the right to make clawback claims of any contribution made to an entity described above, unless the contribution was made within the two-year period before the victim starts a clawback lawsuit against the recipient of the gift and the charity had "reasonable cause" to believe that:

(1) the donor made the transfer with actual intent to hinder, delay, or defraud a creditor of the donor, or

(2) the donor was or would be insolvent either before the donation, as a result of it, or as a result of transactions the debtor planned to engage in.

The two-year lookback period eliminates the victim's right to sue the charity to recover a gift made more than two years before the victim starts the clawback lawsuit. (In some cases, the victim may not know the victim has a claim against the donor or may not know about the donor's gift to the charity, until more than two years after the gift was made.)

Makes the act effective the day following final enactment (April 4, 2012), and apply to causes of action arising before, on, or after that date.