HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 1384 **DATE:** April 29, 2011
Version: Second engrossment

Authors: Davids and others

Subject: Clawbacks of fraudulent transfers to charity

Analyst: Tom Pender (651) 296-1885

Overview

This bill 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 bill deals with fraudulent transfers to charitable organizations. The bill 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 at the time of the gift. The bill 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:

(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 any contribution made to an entity described above, unless the charity had "reasonable cause," within 60 days after the contribution, 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.

Makes the bill effective August 1, 2011, and apply to causes of action arising before, on, or after that date.