

SUBJECT: Permitting the awarding of attorneys' fees and costs in actions under UFTA

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Giddings, Elkins, Bohac, Martinez Fischer, J. Moreno, Oliveira, Solomons, Zedler

0 nays

1 absent — Kolkhorst

WITNESSES: None

BACKGROUND: The Uniform Fraudulent Transfer Act (UFTA) — Business and Commerce Code, Title 3, Ch. 24 — is intended to prevent a debtor from transferring away valuable assets in exchange for less than adequate value, thus making it impossible for creditors to recover the full amount of their damages. If a creditor has obtained a judgment against a debtor, the creditor, upon court order, may levy execution on the asset transferred or its proceeds. However, there is no provision in UFTA that expressly allows a party to recover attorneys' fees and costs incurred during the recovery process.

The American Rule provides that attorneys' fees are not to be awarded to the winning party unless there is statutory or contractual authorization. However, there are exceptions including when the opponent has acted in bad faith, vexatiously, and wantonly, or for oppressive reasons.

DIGEST: HB 276 would allow a court to award reasonable attorneys' fees and costs incurred for any proceeding under UFTA.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: It is necessary to allow attorneys' to recover fees and to allow the parties to be reimbursed for their costs because fraudulent transfer cases often are very complicated and difficult to pursue. Creditors need attorneys to pursue such

cases and should not be forced to forego part of their recovery to pay for the attorney and the costs of recovering their property. A statute providing for the recovery of damages in complicated cases also should give the prevailing litigants the opportunity to recover costs and reasonable attorneys' fees.

UFTA is intended to deter debtors from illegally shielding valuable assets from creditors seeking to recover damages. If attorneys' fees and costs are not awarded in these cases, the debtor is rewarded for fraudulently shifting assets. It was not the intent of the Legislature to preclude the awarding of attorneys' fees in these cases — it was merely an oversight.

The American Rule precludes the awarding of attorneys' fees in cases where they are not authorized by contract or statute. It is necessary to specifically allow creditors to recover attorneys' fees and costs by statute so that judges will be free to award them when they are due.

OPPONENTS
SAY:

No apparent opposition.