

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

400Z0500

## HOUSE BILL NO. 1059

Introduced by: The Committee on Judiciary at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding payments of higher  
2 education expenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 54-8A-8 be amended to read:

5 54-8A-8. (a) A transfer or obligation is not voidable under subsection 54-8A-4(a)(1) against  
6 a person who took in good faith and for a reasonably equivalent value or against any subsequent  
7 transferee or obligee.

8 (b) Except as otherwise provided in this section, to the extent a transfer is voidable in an  
9 action by a creditor under subsection 54-8A-7(a)(1) the creditor may recover judgment for the  
10 value of the asset transferred, as adjusted under subsection (c) of this section, or the amount  
11 necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

12 (1) The first transferee of the asset or the person for whose benefit the transfer was made;

13 or

14 (2) Any subsequent transferee other than a good faith transferee who took for value or  
15 from any subsequent transferee.



1 (c) If the judgment under subsection (b) of this section is based upon the value of the asset  
2 transferred, the judgment shall be for an amount equal to the value of the asset at the time of the  
3 transfer, subject to adjustment as the equities may require.

4 (d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith  
5 transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or  
6 obligation, to:

- 7 (1) A lien on or a right to retain any interest in the asset transferred;
- 8 (2) Enforcement of any obligation incurred; or
- 9 (3) A reduction in the amount of the liability on the judgment.

10 (e) A transfer is not voidable under subsection 54-8A-4(a)(2) or § 54-8A-5 if the transfer  
11 results from:

- 12 (1) Termination of a lease upon default by the debtor when the termination is pursuant  
13 to the lease and applicable law; or
- 14 (2) Enforcement of a security interest in compliance with chapter 57A-9.

15 (f) A transfer is not voidable under subdivision 54-8A-5(b):

- 16 (1) To the extent the insider gave new value to or for the benefit of the debtor after the  
17 transfer was made unless the new value was secured by a valid lien;
- 18 (2) If made in the ordinary course of business or financial affairs of the debtor and the  
19 insider; or
- 20 (3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer  
21 secured present value given for that purpose as well as an antecedent debt of the  
22 debtor.

23 (g) A transfer or obligation is not voidable under § 54-8A-4 or 54-8A-5 against an institution  
24 of higher education, as defined in 20 USC 1001 as of January 1, 2018, if the transfer was made

- 1 or obligation incurred by a parent or guardian on behalf of a minor or adult child in furtherance
- 2 of the minor or adult child's education.