

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.8126 Transfers and obligations as fraudulent; avoidance by receiver; retention of property, lien, or obligation as security for repayment; preservation of transfer or obligation; perfection of transfer; transfer creating equitable lien; fraudulent transaction of insurer with reinsurer.

Sec. 8126. (1) Every transfer made or suffered and every obligation incurred by an insurer within 1 year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors, if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and except that a purchaser, lienor, or obligee, who in good faith has given a consideration less than fair equivalent value for the transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court, on due notice, may order the transfer or obligation to be preserved for the benefit of the estate, and if so ordered, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(2) A transfer of property other than real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceeding on a simple contract could become superior to the rights of the transferee under section 8128(5) and (6). A transfer of real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee. A transfer which creates an equitable lien shall not be considered to be perfected if there are available means by which a legal lien could be created. A transfer not perfected prior to the filing of a petition for liquidation shall be considered to be made immediately before the filing of the successful petition. The provisions of this subsection apply whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

(3) A transaction of the insurer with a reinsurer shall be considered fraudulent and may be avoided by the receiver under subsection (1) if both of the following occur:

(a) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release.

(b) Any part of the transaction took place within 1 year prior to the date of filing of the petition through which the receivership was commenced.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990.

Popular name: Act 218