60B.30 FRAUDULENT TRANSFERS PRIOR TO PETITION.

Subdivision 1. **Definition and effect.** Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under sections 60B.01 to 60B.61 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 sections 60B.01 to 60B.61, 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 any purchaser, lienor or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

Subd. 2. **Perfection of transfers.** (a) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under section 60B.32, subdivision 3.

(b) A transfer of real property shall be deemed 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.

(c) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) This subdivision applies whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

Subd. 3. **Fraudulent reinsurance transactions.** Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subdivision 1 if:

(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 transaction, unless the reinsurer gives a present fair equivalent value for the release; and

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

Subd. 4. **Fraudulent transfers to affiliates.** Any distribution, other than stock dividends paid by the insurer on its capital stock, made by the insurer to an affiliate owning more than 50 percent of the voting stock of the insurer during the five years preceding the filing of a successful petition for rehabilitation or liquidation under sections 60B.01 to 60B.61 shall be deemed fraudulent and may be avoided by the receiver; except that:

(a) no distribution shall be recoverable if the insurer shows that when paid, it was lawful, reasonable, and that the insurer did not know, and could not reasonably have known, that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations;

(b) any person who was an affiliate owning more than 50 percent of the voting stock of the insurer at the time the distributions were paid shall be liable only up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that person would have received if they had been paid immediately. If two persons are liable with respect to the same distribution, they shall be jointly and severally liable;

(c) the maximum amount recoverable under this subdivision shall be the amount needed in addition to all other available assets of the insurer to pay its contractual obligations;

(d) if any person liable under clause (b) is insolvent, all its affiliates that controlled it at the time the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: *1969 c 708 s 30; 1977 c 273 s 19; 1986 c 444*