



Ohio Revised Code

Section 3903.26 Transfers and obligations incurred one year prior to proceeding.

Effective: March 23, 2018

Legislation: Senate Bill 169 - 132nd General Assembly

(A) Except as provided in division (D) of this section, every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful complaint for rehabilitation or liquidation under sections 3903.01 to 3903.59 of the Revised Code 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 3903.01 to 3903.59 of the Revised Code, which is fraudulent under this section, may be avoided by the rehabilitator or liquidator, 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 rehabilitator or liquidator shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(B)(1) A transfer of property other than real property is 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 division (C) of section 3903.28 of the Revised Code.

(2) A transfer of real property is 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.

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

(4) Any transfer not perfected prior to the filing of a complaint for rehabilitation or liquidation is deemed to be made immediately before the filing of the complaint.

(5) The provisions of divisions (B)(1) to (5) of this section apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.



(C) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the rehabilitator or liquidator under division (A) of this section if both of the following apply:

(1) 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;

(2) Any part of the transaction took place within one year prior to the date of filing of the complaint through which the rehabilitation or liquidation was commenced.

(D)(1) Except as provided in division (D)(2) of this section, any transfer of and any obligation to transfer money or other property from an insurer-member of a federal home loan bank to the federal home loan bank under a federal home loan bank security, pledge, collateral, or guarantee agreement, or other similar arrangement or credit enhancement, shall not be deemed fraudulent and shall not be avoided by the rehabilitator or liquidator under division (A) of this section if the agreement, arrangement, or enhancement is both of the following:

(a) Made in the ordinary course of business;

(b) Made in compliance with the applicable federal home loan bank agreement.

(2) Notwithstanding division (D)(1) of this section, a transfer may be deemed fraudulent and may be avoided by the rehabilitator or liquidator under division (A) of this section if the transfer is made with the intent to hinder, delay, or defraud an insurer-member of the federal home loan bank, the liquidator or rehabilitator of the insurer-member, or existing or future creditors of the insurer-member.

(3) As used in division (D) of this section, "insurer-member" means a member of the federal home loan bank in question that is an insurer.