

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

500.8130 Setoff or counterclaim.

Sec. 8130.

(1) Mutual debts or mutual credits, whether arising out of 1 or more contracts, between the insurer and another person in connection with an action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) and section 8133.

(2) A setoff or counterclaim shall not be allowed in favor of a person if:

(a) The insurer's obligation to the person would not at the date of the filing of a petition for receivership entitle the person to share as a claimant in the assets of the insurer.

(b) The insurer's obligation to the person was purchased by or transferred to the person with a view to its being used as a setoff.

(c) The insurer's obligation is owed to an affiliate of the person or any other entity or association other than the person.

(d) The person's obligation is owed to an affiliate of the insurer or any other entity or association other than the insurer.

(e) The person's obligation is to pay an assessment levied against the insurer's members or subscribers, is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution.

(f) The obligations between the person and the insurer arise from business where either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

(3) The receiver shall provide persons with accounting statements identifying all debts that are due and payable. If a person owes to the insurer amounts that are due and payable, against which the person asserts setoff of mutual credits that may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the amounts due and payable, provided that, notwithstanding section 8142 or any other provision of this chapter, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer. Prior to the termination of any proceeding under this chapter, the amount due the person shall be determined for the purpose of the receiver making a final refund, if any.

(4) Subsections (2)(c), (d), and (f) and (3) apply to all contracts entered into, renewed, extended, or amended on or after 1 year after the effective date of this subsection and to debts or credits arising from any business written or transactions occurring after the effective date of this subsection pursuant to any such contract. For purposes of this section any change in the terms of, or consideration for, any such contract shall be considered an amendment.

History: Add. 1989, Act 302, Imd. Eff. Jan. 3, 1990 ;-- Am. 1994, Act 226, Imd. Eff. June 27, 1994

Popular Name: Act 218