

**31A-27a-502 Recovery from affiliates.**

- (1)
  - (a) If a receivership order is entered under this chapter, the receiver appointed under the receivership order may recover on behalf of the insurer from an affiliate as defined in Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years preceding the filing date of the delinquency proceedings.
  - (b) A person disputing that person's status as an affiliate shall prove by clear and convincing evidence the person's nonaffiliate status.
  - (c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).
- (2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is not recoverable if the recipient shows by a preponderance of the evidence that:
  - (a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;
  - (b) the department had notice to and approved the stock dividend; and
  - (c) the insurer did not know and could not reasonably have known that the stock dividend distribution to the affiliate might adversely affect the solvency of the insurer.
- (3) The maximum amount recoverable under this section is the amount needed to pay all claims under the receivership:
  - (a) in excess of all other available recoverable assets; and
  - (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to any receiver under similar laws of other states.
- (4)
  - (a) A person who is an affiliate at the time value is received is liable up to the amount of value received by the affiliate.
  - (b) If two or more affiliates are liable regarding the same value received, they are jointly and severally liable.
- (5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one year, all affiliates at the time the value is received are jointly and severally liable for any resulting deficiency in the amount that would have been recovered from the nonpaying affiliate.
- (6) This section does not enlarge the personal liability of a director under existing law.
- (7) An action or proceeding under this section may not be commenced after the earlier of:
  - (a) six years after the day on which a receiver is appointed; or
  - (b) the day on which the receivership is terminated.

Amended by Chapter 297, 2011 General Session