

31A-27a-512 Reinsurer's liability.

- (1)
 - (a) Except as otherwise provided in this chapter, the amount recoverable by the receiver from a reinsurer may not be reduced as a result of a delinquency proceeding with a finding of insolvency, regardless of any provision in the reinsurance contract or other agreement.
 - (b) An agreement, written, oral, or otherwise, may not be enforced to the extent it is in conflict, or not in strict compliance with this section.
 - (c) Except as expressly provided in this section, a person other than the receiver whether as a creditor, third party beneficiary, or otherwise does not have a direct right to reinsurance proceeds from any reinsurer of the insolvent insurer:
 - (i) on the basis of any written or oral agreement; or
 - (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.
 - (d) This section applies to all the insurer's reinsurance contracts including:
 - (i) treaty reinsurance;
 - (ii) quota share reinsurance;
 - (iii) facultative reinsurance; or
 - (iv) a fronting or captive reinsurance arrangement.
- (2) Except as otherwise provided in Subsection (9), the amount recoverable by the liquidator from a reinsurer is payable under one or more contracts reinsured by the reinsurer on the basis of:
 - (a) proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver, to the extent of the payment; or
 - (b) the allowance of the claim pursuant to:
 - (i) Section 31A-27a-608;
 - (ii) an order of the receivership court; or
 - (iii) a plan of rehabilitation.
- (3) If the insurer takes credit for a reinsurance contract in a filing or submission made to the commissioner and the reinsurance contract does not contain the provisions required with respect to the obligations of reinsurers in the event of insolvency of the reinsured, the reinsurance contract is considered to contain the provisions required with respect to:
 - (a) the obligations of reinsurers in the event of insolvency of the reinsured in order to obtain credit for reinsurance; or
 - (b) other applicable statutes.
- (4) A reinsurance contract that under Subsection (3) is considered to contain certain provisions, is considered to contain a provision that:
 - (a) in the event of insolvency and the appointment of a receiver, the reinsurance obligation is payable to the ceding insurer or to its receiver without diminution because of the insolvency or because the receiver fails to pay all or a portion of the claim;
 - (b) payment shall be made upon either:
 - (i) to the extent of the payment, proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver; or
 - (ii) the allowance of the claim pursuant to:
 - (A) Section 31A-27a-608;
 - (B) an order of the receivership court; or
 - (C) a plan of rehabilitation; and
 - (c) if a reinsurer does not pay the amount billed by the receiver within 60 days after the mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the statutory legal rate provided in Subsection 15-1-1(2), except that all or a portion of the interest may be waived as part of an arbitration proceeding.

- (5)
 - (a) The receiver shall notify in writing, in accordance with the terms of the contract, each reinsurer obligated in relation to the claim or the pendency of a claim against the reinsured company.
 - (b) The receiver's failure to give notice of a pending claim pursuant to a provision in a reinsurance contract:
 - (i) does not excuse the obligation of the reinsurer unless the reinsurer is prejudiced by the receiver's failure; and
 - (ii) if the reinsurer is prejudiced, reduces the reinsurer's obligations only to the extent of the prejudice.
 - (c) A reinsurer may interpose, at its own expense, in a proceeding in which a claim is to be adjudicated, any one or more defenses that the reinsurer considers available to the reinsured company or its receiver.
- (6) The entry of an order of rehabilitation or liquidation:
 - (a) may not be considered a breach or an anticipatory breach of a reinsurance contract; and
 - (b) is not grounds for retroactive revocation or retroactive cancellation of a reinsurance contract by the reinsurer.
- (7)
 - (a) If a reinsurance payment to a receiver of a ceding insurer is later determined to be a payment in excess of the amounts actually due to the receiver, the excess shall be:
 - (i) credited against future payments due to the receiver; or
 - (ii) repaid to the reinsurer as an administrative expense of the estate pursuant to Subsection 31A-27a-701(2)(g).
 - (b) A repayment under this Subsection (7) may be limited on the basis of the property remaining in the estate.
- (8)
 - (a) Subject to Subsection (1):
 - (i) except as provided in Subsection (8)(a)(ii):
 - (A) a payment made by the reinsurer directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate; and
 - (B) a payment made by the reinsurer shall be made directly to the ceding insurer or its receiver;
 - (ii) Subsection (8)(a)(i) does not apply when:
 - (A) the reinsurance contract or other written agreement to which the insured, ceding insurer, and reinsurer are all parties:
 - (I) specifically provides another payee, other than an affiliate of the ceding insurer or reinsurer, of the reinsurance in the event of the insolvency or receivership of the ceding insurer; and
 - (II) the provision described in this Subsection (8)(a)(ii)(A) is contained in:
 - (Aa) the reinsurance contract as it is written on the day on which the reinsurance contract is initially executed; or
 - (Bb) the other written agreement as it is written on the day on which the initial policy is issued;
 - (B) the reinsurance contract, as it is written on the day on which the reinsurance contract is initially executed, contains a provision where the assuming insurer with the consent of the direct insured and the ceding insurer assumes all policy obligations of the ceding insurer:
 - (I) as a direct obligation of the assuming insurer to the payees under the policies; and
 - (II) in substitution for the entire obligations of the ceding insurer to the payees; or

- (C) a life and health insurance guaranty association makes the election to succeed to the rights and obligations of the insolvent insurer under a contract of reinsurance:
 - (I) in accordance with:
 - (Aa) Section 31A-27a-513; or
 - (Bb) the life and health guaranty association laws of its domiciliary state; or
 - (II) pursuant to other applicable law, rule, order, or assignment contract; and
 - (iii) in the circumstances described in Subsection (8)(a)(ii)(C), a payment shall be made directly to or at the direction of the guaranty association.
- (b) Both the receiver and the reinsurer are entitled to recover from a person, other than the receiver or a guaranty association, who unsuccessfully makes a claim directly against the reinsurer the following incurred in preventing any collection by that person:
 - (i) the person's attorney fees; and
 - (ii) expenses.
- (9) This chapter may not be construed to authorize the liquidator or any other entity to compel payment from a nonlife reinsurer:
 - (a) on the basis of estimated incurred but not reported losses, loss expenses, or case reserves for unpaid losses and loss expenses, except under Sections 31A-27a-515 and 31A-27a-516; and
 - (b) with respect to a claim allowed in accordance with Section 31A-27a-605.

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