

31A-27a-513 Reinsurance continuation and termination.

- (1) For purposes of this section:
 - (a) "Coverage date" is the day on which an order of liquidation is entered.
 - (b) "Election date" is the day on which an affected guaranty association elects to assume under this section the rights and obligations of a ceding insurer that relate to a policy or annuity covered, in whole or in part, by the affected guaranty association.
- (2) A contract reinsuring a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity issued by a ceding insurer that is placed in rehabilitation proceedings pursuant to this chapter shall be continued or terminated pursuant to:
 - (a) the terms or conditions of each contract; and
 - (b) this section.
- (3) A contract reinsuring a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity issued by a ceding insurer that is placed into liquidation pursuant to this chapter shall be continued, subject to this section, unless:
 - (a) the contract is terminated pursuant to the contract's terms before the coverage date; or
 - (b) the contract is terminated pursuant to the order of liquidation, in which case Subsection (10) applies.
- (4)
 - (a)
 - (i) At any time within 180 days of the coverage date, an affected guaranty association covering a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity, in whole or in part, may elect to assume the rights and obligations of the ceding insurer that relate to the policy or annuity covered, in whole or in part, by the affected guaranty association, under one or more reinsurance contracts between the insolvent insurer and the insolvent insurer's reinsurers selected by the affected guaranty association.
 - (ii) An assumption under this Subsection (4)(a) is effective as of the coverage date.
 - (iii) The election described in this Subsection (4)(a) is made by the affected guaranty association or a nationally recognized association of guaranty associations that is designated by the affected guaranty association to act on the affected guaranty association's behalf for purposes of this Subsection (4)(a) by sending written notice, return receipt requested, to the affected reinsurers.
 - (b)
 - (i) To facilitate the earliest practicable decision about whether to assume a contract of reinsurance and to protect the financial position of the estate, the receiver and each reinsurer of the ceding insurer shall make available the information described in Subsection (4)(b)(ii):
 - (A) upon request to an affected guaranty association; or
 - (B) to a nationally recognized association of guaranty associations that is designated by the affected guaranty association to act on behalf of the affected guaranty associations for purposes of this Subsection (4) as soon as possible after commencement of formal delinquency proceedings.
 - (ii) The information described in Subsection (4)(b)(i) is:
 - (A) copies of all in-force contracts of reinsurance;
 - (B) all records related to in-force contracts of reinsurance relevant to the determination of whether the in-force contracts of reinsurance should be assumed; and
 - (C) notice of:
 - (l) a default under the in-force contracts of reinsurance; or

- (II) a known event or condition that with the passage of time could become a default under the in-force contracts of reinsurance.
- (c) Subsections (4)(c)(i) through (vi) apply to a reinsurance contract assumed by an affected guaranty association under this Subsection (4).
 - (i) The guaranty association is responsible for the following that relates to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the guaranty association:
 - (A) all unpaid premiums due under a reinsurance contract, for the periods both before and after the coverage date; and
 - (B) the performance of all other obligations to be performed after the coverage date.
 - (ii) The affected guaranty association:
 - (A) may charge a policy of insurance or annuity covered in part by the affected guaranty association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the affected guaranty association; and
 - (B) if it imposes a charge under this Subsection (4)(c)(ii), shall provide notice and an accounting of the charge to the liquidator.
 - (iii) The affected guaranty association is entitled to any amount payable by the reinsurer under the reinsurance contract with respect to a loss or event:
 - (A) that:
 - (I) occurs in a period on or after the coverage date; and
 - (II) relates to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the affected guaranty association; and
 - (B) except that upon receipt of the amount, the affected guaranty association is obliged to pay to the beneficiary under the insurance policy or annuity on account of which the amount is paid a portion of the amount equal to the lesser of:
 - (I) the amount received by the affected guaranty association; and
 - (II) an amount calculated by:
 - (Aa) determining the excess of the amount received by the affected guaranty association over the amount equal to the benefits paid by the affected guaranty association on account of the policy or annuity; and
 - (Bb) subtracting the retention of the insurer applicable to the loss or event.
 - (iv)
 - (A) Within 30 days following the election date, the affected guaranty association and each reinsurer under a contract assumed by the affected guaranty association shall calculate the net balance due to or from the affected guaranty association under each reinsurance contract as of the election date with respect to a policy or annuity covered, in whole or in part, by the affected guaranty association.
 - (B) The calculation required by Subsection (4)(c)(iv)(A) shall give full credit to all items paid by the insurer, the insurer's receiver, or the reinsurer before the election date.
 - (C) The reinsurer shall pay the receiver an amount due for a loss or event before the coverage date, subject to any setoff for premiums unpaid for periods before the coverage date.
 - (D) Within five days of the completion of the calculation required by Subsection (4)(c)(iv)(A), the affected guaranty association or reinsurer shall pay any balance due the other after completion of the calculation.
 - (E) A dispute over an amount due to either the affected guaranty association or the reinsurer shall be resolved by arbitration:

- (I) pursuant to the terms of the affected reinsurance contract; or
 - (II) if the affected reinsurance contract contains no arbitration clause, as provided in Subsection (10)(d).
- (v) If the receiver receives an amount due the affected guaranty association pursuant to Subsection (4)(c)(iii), the receiver shall remit that amount to the affected guaranty association as promptly as practicable.
 - (vi) If the affected guaranty association or the receiver on the affected guaranty association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the affected guaranty association, the reinsurer may not:
 - (A) terminate the reinsurance contract for failure to pay premiums, insofar as the reinsurance contract relates to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the affected guaranty association; and
 - (B) set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the affected guaranty association, against amounts due the affected guaranty association.
- (5)
- (a) If pursuant to court approval under Section 31A-27a-402 a receiver continues a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity in force following an order of liquidation, and the policy of insurance or annuity is not covered in whole or in part by one or more affected guaranty associations, the receiver may elect to assume the rights and obligations of the ceding insurer under one or more of the reinsurance contracts that relate to the policy or annuity:
 - (i) within 180 days of the coverage date; and
 - (ii) if the contract is not terminated as set forth in Subsection (2).
 - (b) The election described in this Subsection (5) shall be made by sending written notice, return receipt requested, to the affected reinsurers.
 - (c) If the election described in this Subsection (5) is made:
 - (i) payment of premiums on the reinsurance contract for the policy or annuity, for periods both before and after the coverage date, shall be chargeable against the estate as a Class 1 administrative expense; and
 - (ii) amounts paid by the reinsurer on account of losses on the policy or annuity shall be to the estate of the insolvent insurer.
- (6) During the period beginning on the coverage date and ending on the election date:
- (a)
 - (i) neither the affected guaranty association nor the reinsurer has any rights or obligations under a reinsurance contract that the affected guaranty association has the right to assume under Subsection (4), whether for a period before or after the coverage date;
 - (ii)
 - (A) with respect to the period after the coverage date, neither the receiver nor the reinsurer has any rights or obligations under a reinsurance contract that the receiver has the right to assume under Subsection (5); and
 - (B) with respect to the period before the coverage date, the rights and obligations of the affected guaranty association and the reinsurer remain unchanged; and
 - (iii) the reinsurer, the receiver, and an affected guaranty association shall, to the extent practicable, provide each other data and records reasonably requested; and

- (b) once the affected guaranty association or the receiver, as the case may be, elects or declines to elect to assume a reinsurance contract, the parties' rights and obligations are governed by Subsection (4), (5), or (10), as applicable.
- (7)
- (a) If an affected guaranty association does not elect to assume a reinsurance contract by the election date pursuant to Subsection (4), the affected guaranty association has no rights or obligations, in each case for periods both before and after the coverage date, with respect to the reinsurance contract.
 - (b) If a receiver does not elect to assume a reinsurance contract by the election date pursuant to Subsection (5), the receiver and the reinsurer:
 - (i) retain their respective rights and obligations with respect to the reinsurance contract for the period before the coverage date; and
 - (ii) have no rights or obligations to each other for the period after the coverage date, except as provided in Subsection (10).
 - (c)
 - (i) If an affected guaranty association or the receiver, as the case may be, does not elect to assume a reinsurance contract by the election date, the reinsurance contract terminates retroactively effective on the coverage date.
 - (ii) A reinsurance contract covering a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity that is terminated pursuant to Section 31A-27a-402 terminates effective on the coverage date.
 - (iii) Subsection (10) applies to a reinsurance contract described in Subsection (7)(c)(i) or (ii).
- (8)
- (a) Subject to Subsection (8)(b), when a life insurance policy, disability income insurance policy, long-term care insurance policy, an annuity, or guaranty association obligation with respect to that policy or annuity is transferred to an assuming insurer, reinsurance on the policy or annuity may also be transferred:
 - (i) by the affected guaranty association, in the case of a contract assumed under Subsection (4); or
 - (ii) by the receiver, in the case of a contract assumed under Subsection (5).
 - (b) A transfer under Subsection (8)(a), is subject to the following:
 - (i) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred may not cover a new policy of insurance or new annuity in addition to those transferred;
 - (ii) the obligations described in Subsections (4) and (5) do not apply with respect to matters arising after the effective date of the transfer; and
 - (iii) notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days before the effective date of the transfer.
- (9)
- (a) This section shall, to the extent provided in this chapter, supersede a law or an affected reinsurance contract that provides for or requires a payment of reinsurance proceeds on account of a loss or event:
 - (i) that occurs in a period after the coverage date; and
 - (ii) to the receiver of the insolvent insurer or to any other person.
 - (b) The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to a loss or event that occurs in a period before the coverage date, subject to this chapter including applicable setoff provisions.

- (10) If a contract reinsuring a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity is terminated pursuant to this chapter, the procedures of this Subsection (10) apply.
- (a) The reinsurer and the receiver shall, upon written notice to the other party to the reinsurance contract no later than 30 days after the receipt by the reinsurer of notice of termination, commence a mandatory negotiation and arbitration procedure in accordance with this Subsection (10).
- (b)
- (i) Each party shall appoint an actuary to determine an estimated sum due as a result of the termination of the reinsurance contract calculated in a way expected to make the parties economically indifferent as to whether the reinsurance contract continues or terminates, giving due regard to the economic effects of the insolvency.
- (ii) The estimated sum described in this Subsection (10)(b) shall:
- (A) take into account the present value of future cash flows expected under the reinsurance contract; and
- (B) be based on a gross premium valuation of net liability using current assumptions:
- (I) that reflect postinsolvency experience expectations, with no additional margins;
- (II) that are net of any amounts payable and receivable; and
- (III) with a market value adjustment to reflect premature sale of assets to fund the settlement.
- (c)
- (i) Within 90 days of the day on which the written request pursuant to Subsection (10)(a) is made, each party shall provide the other party with:
- (A) its estimate of the sum due as a result of the termination of the reinsurance contract; and
- (B) all relevant documents and other information supporting the estimate.
- (ii) The parties shall make a good faith effort to reach agreement on the sum due.
- (d)
- (i) If the parties are unable to reach agreement within 90 days following the day on which the materials required in Subsection (10)(c) are submitted, either party may initiate arbitration proceedings:
- (A) as provided in the reinsurance contract; or
- (B) if the reinsurance contract does not contain an arbitration clause, pursuant to this Subsection (10)(d) by providing the other party with a written demand for arbitration.
- (ii) Arbitration under Subsection (10)(d)(i)(B) shall be conducted pursuant to the following procedures:
- (A) Venue for the arbitration shall be within the county of the court's jurisdiction or another location agreed to by the parties.
- (B) Within 30 days of the responding party's receipt of the arbitration demand, each party shall appoint an arbitrator who is:
- (I) a disinterested active or retired officer or executive of a life insurance or reinsurance company; or
- (II) other professional with no less than 10 years experience in or relating to the field of life insurance or life reinsurance.
- (C) The two arbitrators appointed under Subsection (10)(d)(ii)(B) shall appoint an independent, impartial, disinterested umpire who is an:
- (I) active or retired officer or executive of a life insurance or reinsurance company; or
- (II) other professional with no less than 10 years experience in the field of life insurance or life reinsurance.

- (D) If the arbitrators appointed under Subsection (10)(d)(ii)(B) are unable to agree on an umpire:
 - (I) each arbitrator shall provide the other with the names of three qualified individuals;
 - (II) each arbitrator shall strike two names from the other's list; and
 - (III) the umpire shall be chosen by drawing lots from the remaining individuals.
- (E) Within 60 days following the day on which the umpire is appointed, each party shall, unless otherwise ordered by the arbitration panel, submit to the arbitration panel:
 - (I) the party's estimates of the sum due as a result of the termination of the reinsurance contract; and
 - (II) all relevant documents and other information supporting the estimate.
- (F) The time periods set forth in this Subsection (10)(d)(ii) may be extended upon mutual agreement of the parties.
- (G) The arbitration panel has all powers necessary to conduct the arbitration proceedings in a fair and appropriate manner, including the power to:
 - (I) request additional information from the parties;
 - (II) authorize discovery;
 - (III) hold hearings; and
 - (IV) hear testimony.
- (H) The arbitration panel may, if the arbitration panel considers it necessary, appoint one or more independent actuarial experts, the expense of which shall be shared equally between the parties.
- (I) An arbitration panel considering the matters set forth in this Subsection (10)(d) shall:
 - (I) apply the standards set forth in Subsection (10)(b); and
 - (II) issue a written award specifying a net settlement amount due from one party or the other as a result of the termination of the reinsurance contract.
- (e) The supervising court shall confirm an award issued under Subsection (10)(d)(ii)(I) absent proof of statutory grounds for vacating or modifying arbitration awards under the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.
- (f)
 - (i) If the net settlement amount agreed or awarded pursuant to this Subsection (10) is payable by the reinsurer, the reinsurer shall pay the amount due to the estate subject to any applicable setoff under Section 31A-27a-510.
 - (ii) If the net settlement amount agreed or awarded pursuant to this Subsection (10) is payable by the insurer, the reinsurer is considered to have a timely filed claim against the estate for that amount, which claim shall be paid pursuant to the priority established in Subsection 31A-27a-701(2)(f).
 - (iii) A guaranty association:
 - (A) is not entitled to receive the net settlement amount, except to the extent it is entitled to share in the estate assets as creditors of the estate; and
 - (B) has no responsibility for the net settlement amount.
- (11)
 - (a) Except as otherwise provided in this section, this section does not alter or modify the terms and conditions of a reinsurance contract.
 - (b) This section does not abrogate or limit any rights of a reinsurer to claim that it is entitled to rescind a reinsurance contract.
 - (c) This section does not give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract.

- (d) This section does not limit or affect any guaranty association's rights as a creditor of the estate against the assets of the estate.
- (e) This section does not apply to a reinsurance agreement covering property or casualty risks.

Amended by Chapter 345, 2008 General Session