

Part 5 Enforcement and Delinquency

31A-37a-501 Suspension and revocation.

- (1)
 - (a) The commissioner shall notify a special purpose financial captive insurance company not less than 30 days before suspending or revoking the special purpose financial captive insurance company's certificate of authority pursuant to Section 31A-37-505.
 - (b) In the notice required by Subsection (1)(a) the commissioner shall state the basis for the suspension or revocation.
 - (c) The commissioner shall give a special purpose financial captive insurance company described in this Subsection (1) an opportunity for a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act.
- (2) Notwithstanding Subsection (1) and Title 63G, Chapter 4, Administrative Procedures Act, the commissioner is not required to provide prior notice or a hearing if the grounds for suspension or revocation of a special purpose financial captive insurance company's certificate of authority pursuant to Section 31A-37-505 relate primarily to:
 - (a) the financial condition or soundness of the special purpose financial captive insurance company; or
 - (b) a deficiency in the assets of the special purpose financial captive insurance company.

Enacted by Chapter 302, 2008 General Session

31A-37a-502 Delinquency.

- (1) Except as otherwise provided in this section, Chapter 27a, Insurer Receivership Act, applies to a special purpose financial captive insurance company.
- (2) Upon an order of supervision, rehabilitation, or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company pursuant to this chapter.
- (3) An amount recoverable by the receiver of a special purpose financial captive insurance company under a reinsurance contract may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding insurer, notwithstanding a contract or other documentation governing the special purpose financial captive insurance company insurance securitization.
- (4) The following applies notwithstanding Chapter 27a, Insurer Receivership Act, or another law of this state:
 - (a) An application, petition, a temporary restraining order, or injunction issued pursuant to Chapter 27a, Insurer Receivership Act, with respect to a ceding insurer does not prohibit the transaction of business by a special purpose financial captive insurance company, including:
 - (i) a payment by a special purpose financial captive insurance company made with respect to a special purpose financial captive insurance company security; or
 - (ii) an action or proceeding against a special purpose financial captive insurance company or its assets.
 - (b)
 - (i) Subject to Subsection (4)(b)(ii), the commencement of a summary proceeding with respect to a special purpose financial captive insurance company and an order issued by the court in the summary proceeding may not prohibit:

- (A) a payment by a special purpose financial captive insurance company; or
- (B) the special purpose financial captive insurance company from taking an action required to make a payment described in this Subsection (4)(b)(i).
- (ii) Subsection (4)(b)(i) applies only if the payment is made:
 - (A) pursuant to a special purpose financial captive insurance company security or reinsurance contract; and
 - (B) consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.
- (c) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding insurer to a special purpose financial captive insurance company of money or other property made pursuant to a reinsurance contract.
- (d) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property:
 - (i)
 - (A) made to a ceding insurer pursuant to a reinsurance contract; or
 - (B) made to or for the benefit of a holder of a special purpose financial captive insurance company security with respect to the special purpose financial captive insurance company security; and
 - (ii) made consistent with the special purpose financial captive insurance company's plan of operation and an order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.
- (5)
 - (a) Except to fulfill an obligation under a reinsurance contract and notwithstanding another provision of this chapter, Chapter 37, Captive Insurance Companies Act, or other laws of this state, the assets of a special purpose financial captive insurance company may not be consolidated with or included in the estate of a ceding insurer in a delinquency proceeding against the ceding insurer pursuant to this chapter for any purpose including a distribution to a creditor of the ceding insurer.
 - (b) This Subsection (5) applies to assets that include an asset held in trust:
 - (i) on a funds-withheld basis; or
 - (ii) under another arrangement to secure the special purpose financial captive insurance company's obligations under a reinsurance contract.

Enacted by Chapter 302, 2008 General Session