

**31A-23a-409 Trust obligation for money collected.**

- (1)
  - (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received by, or collected by a licensee for forwarding to insurers or to insureds.
  - (b)
    - (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:
      - (A) the licensee's own money; or
      - (B) money held in any other capacity.
    - (ii) This Subsection (1)(b) does not apply to:
      - (A) amounts necessary to pay bank charges; and
      - (B) money paid by insureds and belonging in part to the licensee as a fee or commission.
  - (c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.
  - (d)
    - (i) Unless money is sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).
    - (ii) Money deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.
- (2) Money required to be deposited under Subsection (1) shall be deposited:
  - (a) in a federally insured trust account in a depository institution, as defined in Section 7-1-103, which:
    - (i) has an office in this state, if the licensee depositing the money is a resident licensee;
    - (ii) has federal deposit insurance; and
    - (iii) is authorized by its primary regulator to engage in the trust business, as defined by Section 7-5-1, in this state; or
  - (b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.
- (3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.
- (4) A trust account into which money is deposited may be interest bearing. The interest accrued on the account may be paid to the licensee, so long as the licensee otherwise complies with this section and with the contract with the insurer.
- (5) A depository institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the licensee.
- (6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.
- (7) A nonresident licensee:
  - (a) shall comply with Subsection (1)(a) by complying with the trust account requirements of the nonresident licensee's home state; and
  - (b) is not required to comply with the other provisions of this section.

Amended by Chapter 253, 2012 General Session