

## Part 1 General Provisions

### **31A-27a-101 Title -- Construction -- Commissioner's powers.**

- (1) This chapter is known as the "Insurer Receivership Act."
- (2) The proceedings authorized by this chapter may be applied to:
  - (a) all insurers and reinsurers:
    - (i) who are doing, or have done, an insurance business in this state; and
    - (ii) against whom claims arising from that business may exist;
  - (b) all insurers who have the appearance of or claim they do an insurance business in this state;
  - (c) all insurers who have insureds resident in this state; and
  - (d) all other persons organized or in the process of organizing to do an insurance business as an insurer in this state.
- (3) This chapter shall be liberally construed to protect the interests of insureds, claimants, creditors, and the public generally through:
  - (a) early detection of any potentially hazardous condition in an insurer;
  - (b) prompt application of appropriate corrective measures;
  - (c) the commissioner making rules pertaining to Subsections (3)(a) and (b):
    - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (ii) that are similar to those set forth in the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition of the National Association of Insurance Commissioners;
  - (d) improved methods for conserving and rehabilitating insurers;
  - (e) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;
  - (f) apportionment of any unavoidable loss in accordance with the statutory priorities set out in this chapter;
  - (g) lessening the problems of interstate receivership by:
    - (i) facilitating cooperation among states in delinquency proceedings; and
    - (ii) extending the scope of personal jurisdiction over debtors of the insurer outside this state;
  - (h) regulation of the business of insurance by the impact of the law relating to delinquency procedures and by substantive rules; and
  - (i) providing for a comprehensive scheme for the receivership of insurance companies and those subject to this chapter as part of the regulation of the business of insurance in this state.
- (4) A proceeding in the case of insurer insolvency and delinquency are integral aspects of the business of insurance and are of vital public interest and concern.
- (5) This chapter does not limit the powers granted the commissioner by other provisions of law.
- (6) The powers and authority of a receiver under this chapter are:
  - (a) cumulative; and
  - (b) in addition to any power or authority available to a receiver under a law other than this chapter.

Amended by Chapter 253, 2012 General Session

### **31A-27a-102 Definitions.**

As used in this chapter:

- (1) "Admitted assets" is as defined by and is measured in accordance with the National Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as incorporated in this state by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).
- (2) "Affected guaranty association" means a guaranty association that is or may become liable for payment of a covered claim.
- (3) "Affiliate" is as defined in Section 31A-1-301.
- (4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated or organized under the laws of a jurisdiction that is not a state.
- (5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person having a claim against an insurer whether the claim is:
  - (a) matured or not matured;
  - (b) liquidated or unliquidated;
  - (c) secured or unsecured;
  - (d) absolute; or
  - (e) fixed or contingent.
- (6) "Commissioner" is as defined in Section 31A-1-301.
- (7) "Commodity contract" means:
  - (a) a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of:
    - (i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; or
    - (ii) a board of trade outside the United States;
  - (b) an agreement that is:
    - (i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; and
    - (ii) commonly known to the commodities trade as:
      - (A) a margin account;
      - (B) a margin contract;
      - (C) a leverage account; or
      - (D) a leverage contract;
  - (c) an agreement or transaction that is:
    - (i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; and
    - (ii) commonly known to the commodities trade as a commodity option;
  - (d) a combination of the agreements or transactions referred to in this Subsection (7); or
  - (e) an option to enter into an agreement or transaction referred to in this Subsection (7).
- (8) "Control" is as defined in Section 31A-1-301.
- (9) "Delinquency proceeding" means a:
  - (a) proceeding instituted against an insurer for the purpose of rehabilitating or liquidating the insurer; and
  - (b) summary proceeding under Section 31A-27a-201.
- (10) "Department" is as defined in Section 31A-1-301 unless the context requires otherwise.
- (11) "Doing business," "doing insurance business," and "business of insurance" includes any of the following acts, whether effected by mail, electronic means, or otherwise:
  - (a) issuing or delivering a contract, certificate, or binder relating to insurance or annuities:
    - (i) to a person who is resident in this state; or
    - (ii) covering a risk located in this state;

- (b) soliciting an application for the contract, certificate, or binder described in Subsection (11)(a);
  - (c) negotiating preliminary to the execution of the contract, certificate, or binder described in Subsection (11)(a);
  - (d) collecting premiums, membership fees, assessments, or other consideration for the contract, certificate, or binder described in Subsection (11)(a);
  - (e) transacting matters:
    - (i) subsequent to execution of the contract, certificate, or binder described in Subsection (11)(a); and
    - (ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);
  - (f) operating as an insurer under a license or certificate of authority issued by the department; or
  - (g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups.
- (12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which an insurer is incorporated or organized, except that "domiciliary state" means:
- (a) in the case of an alien insurer, its state of entry; or
  - (b) in the case of a risk retention group, the state in which the risk retention group is chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.
- (13) "Estate" has the same meaning as "property of the insurer" as defined in Subsection (30).
- (14) "Fair consideration" is given for property or an obligation:
- (a) when in exchange for the property or obligation, as a fair equivalent for it, and in good faith:
    - (i) property is conveyed;
    - (ii) services are rendered;
    - (iii) an obligation is incurred; or
    - (iv) an antecedent debt is satisfied; or
  - (b) when the property or obligation is received in good faith to secure a present advance or an antecedent debt in amount not disproportionately small compared to the value of the property or obligation obtained.
- (15) Notwithstanding Section 31A-1-301, "foreign insurer" means an insurer domiciled in another state.
- (16) "Formal delinquency proceeding" means a rehabilitation or liquidation proceeding.
- (17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (18)
- (a) "General assets" include all property of the estate that is not:
    - (i) subject to a properly perfected secured claim;
    - (ii) subject to a valid and existing express trust for the security or benefit of a specified person or class of person; or
    - (iii) required by the insurance laws of this state or any other state to be held for the benefit of a specified person or class of person.
  - (b) "General assets" includes the property of the estate or its proceeds in excess of the amount necessary to discharge a claim described in Subsection (18)(a).
- (19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset Recovery, also requires the absence of:
- (a) information that would lead a reasonable person in the same position to know that the insurer is financially impaired or insolvent; and
  - (b) knowledge regarding the imminence or pendency of a delinquency proceeding against the insurer.
- (20) "Guaranty association" means:

- (a) a mechanism mandated by Chapter 28, Guaranty Associations; or
  - (b) a similar mechanism in another state that is created for the payment of claims or continuation of policy obligations of a financially impaired or insolvent insurer.
- (21) "Impaired" means that an insurer:
- (a) does not have admitted assets at least equal to the sum of:
    - (i) all its liabilities; and
    - (ii) the minimum surplus required to be maintained by Section 31A-5-211 or 31A-8-209; or
  - (b) has a total adjusted capital that is less than its authorized control level RBC, as defined in Section 31A-17-601.
- (22) "Insolvency" or "insolvent" means that an insurer:
- (a) is unable to pay its obligations when they are due;
  - (b) does not have admitted assets at least equal to all of its liabilities; or
  - (c) has a total adjusted capital that is less than its mandatory control level RBC, as defined in Section 31A-17-601.
- (23) Notwithstanding Section 31A-1-301, "insurer" means a person who:
- (a) is doing, has done, purports to do, or is licensed to do the business of insurance;
  - (b) is or has been subject to the authority of, or to rehabilitation, liquidation, reorganization, supervision, or conservation by an insurance commissioner; or
  - (c) is included under Section 31A-27a-104.
- (24) "Liabilities" is as defined by and is measured in accordance with the National Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as incorporated in this state by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).
- (25)
- (a) Subject to Subsection (21)(b), "netting agreement" means:
    - (i) a contract or agreement that:
      - (A) documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts; and
      - (B) provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with:
        - (I) one or more qualified financial contracts; or
        - (II) present or future payment or delivery obligations or payment or delivery entitlements under the agreement, including liquidation or close-out values relating to the obligations or entitlements, among the parties to the netting agreement;
    - (ii) a master agreement or bridge agreement for one or more master agreements described in Subsection (25)(a)(i); or
    - (iii) any of the following related to a contract or agreement described in Subsection (25)(a)(i) or (ii):
      - (A) a security agreement;
      - (B) a security arrangement;
      - (C) other credit enhancement or guarantee; or
      - (D) a reimbursement obligation.
  - (b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an agreement or transaction that is not a qualified financial contract, the contract or agreement described in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to an agreement or transaction that is a qualified financial contract.
  - (c) "Netting agreement" includes:

- (i) a term or condition incorporated by reference in the contract or agreement described in Subsection (25)(a); or
  - (ii) a master agreement described in Subsection (25)(a).
  - (d) A master agreement described in Subsection (25)(a), together with all schedules, confirmations, definitions, and addenda to that master agreement and transactions under any of the items described in this Subsection (25)(d), are treated as one netting agreement.
- (26)
- (a) "New value" means:
    - (i) money;
    - (ii) money's worth in goods, services, or new credit; or
    - (iii) release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the insurer or the receiver under applicable law, including proceeds of the property.
  - (b) "New value" does not include an obligation substituted for an existing obligation.
- (27) "Party in interest" means:
- (a) the commissioner;
  - (b) a nondomiciliary commissioner in whose state the insurer has outstanding claims liabilities;
  - (c) an affected guaranty association; and
  - (d) the following parties if the party files a request with the receivership court for inclusion as a party in interest and to be on the service list:
    - (i) an insurer that ceded to or assumed business from the insurer;
    - (ii) a policyholder;
    - (iii) a third party claimant;
    - (iv) a creditor;
    - (v) a 10% or greater equity security holder in the insolvent insurer; and
    - (vi) a person, including an indenture trustee, with a financial or regulatory interest in the delinquency proceeding.
- (28)
- (a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it is called:
    - (i) a written contract of insurance;
    - (ii) a written agreement for or affecting insurance; or
    - (iii) a certificate of a written contract or agreement described in this Subsection (28)(a).
  - (b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a policy.
  - (c) "Policy" does not include a contract of reinsurance.
- (29) "Preference" means a transfer of property of an insurer to or for the benefit of a creditor:
- (a) for or on account of an antecedent debt, made or allowed by the insurer within one year before the day on which a successful petition for rehabilitation or liquidation is filed under this chapter;
  - (b) the effect of which transfer may enable the creditor to obtain a greater percentage of the creditor's debt than another creditor of the same class would receive; and
  - (c) if a liquidation order is entered while the insurer is already subject to a rehabilitation order and the transfer otherwise qualifies, that is made or allowed within the shorter of:
    - (i) one year before the day on which a successful petition for rehabilitation is filed; or
    - (ii) two years before the day on which a successful petition for liquidation is filed.
- (30) "Property of the insurer" or "property of the estate" includes:
- (a) a right, title, or interest of the insurer in property:
    - (i) whether:
      - (A) legal or equitable;

- (B) tangible or intangible; or
- (C) choate or inchoate; and
- (ii) including choses in action, contract rights, and any other interest recognized under the laws of this state;
- (b) entitlements that exist before the entry of an order of rehabilitation or liquidation;
- (c) entitlements that may arise by operation of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights; and
- (d)
  - (i) records or data that is otherwise the property of the insurer; and
  - (ii) records or data similar to those described in Subsection (30)(d)(i) that are within the possession, custody, or control of a managing general agent, a third party administrator, a management company, a data processing company, an accountant, an attorney, an affiliate, or other person.
- (31) Subject to Subsection 31A-27a-611(10), "qualified financial contract" means any of the following:
  - (a) a commodity contract;
  - (b) a forward contract;
  - (c) a repurchase agreement;
  - (d) a securities contract;
  - (e) a swap agreement; or
  - (f) a similar agreement that the commissioner determines by rule or order to be a qualified financial contract for purposes of this chapter.
- (32) As the context requires, "receiver" means the commissioner or the commissioner's designee, including a rehabilitator, liquidator, or ancillary receiver.
- (33) As the context requires, "receivership" means a rehabilitation, liquidation, or ancillary receivership.
- (34) Unless the context requires otherwise, "receivership court" refers to the court in which a delinquency proceeding is pending.
- (35) "Reciprocal state" means a state other than this state that:
  - (a) enforces a law substantially similar to this chapter;
  - (b) requires the commissioner to be the receiver of a delinquent insurer; and
  - (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by the receiver of a delinquent insurer.
- (36) "Record," when used as a noun, means information or data, in whatever form maintained, including:
  - (a) a book;
  - (b) a document;
  - (c) a paper;
  - (d) a file;
  - (e) an application file;
  - (f) a policyholder list;
  - (g) policy information;
  - (h) a claim or claim file;
  - (i) an account;
  - (j) a voucher;
  - (k) a litigation file;
  - (l) a premium record;
  - (m) a rate book;

- (n) an underwriting manual;
  - (o) a personnel record;
  - (p) a financial record; or
  - (q) other material.
- (37) "Reinsurance" means a transaction or contract under which an assuming insurer agrees to indemnify a ceding insurer against all, or a part, of a loss that the ceding insurer may sustain under the one or more policies that the ceding insurer issues or will issue.
- (38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (39)
- (a) "Secured claim" means, subject to Subsection (39)(b):
    - (i) a claim secured by an asset that is not a general asset; or
    - (ii) the right to set off as provided in Section 31A-27a-510.
  - (b) "Secured claim" does not include:
    - (i) a special deposit claim;
    - (ii) a claim based on mere possession; or
    - (iii) a claim arising from a constructive or resulting trust.
- (40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (41) "Special deposit" means a deposit established pursuant to statute for the security or benefit of a limited class or classes of persons.
- (42)
- (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured by a special deposit.
  - (b) "Special deposit claim" does not include a claim against the general assets of the insurer.
- (43) "State" means a state, district, or territory of the United States.
- (44) "Subsidiary" is as defined in Section 31A-1-301.
- (45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (46)
- (a) "Transfer" includes the sale and every other and different mode of disposing of or parting with property or with an interest in property, whether:
    - (i) directly or indirectly;
    - (ii) absolutely or conditionally;
    - (iii) voluntarily or involuntarily; or
    - (iv) by or without judicial proceedings.
  - (b) An interest in property includes:
    - (i) a set off;
    - (ii) having possession of the property; or
    - (iii) fixing a lien on the property or on an interest in the property.
  - (c) The retention of a security title in property delivered to an insurer and foreclosure of the insurer's equity of redemption is considered a transfer suffered by the insurer.
- (47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer transacting the business of insurance in this state that has not received a certificate of authority from this state, or some other type of authority that allows for the transaction of the business of insurance in this state.

Amended by Chapter 300, 2014 General Session

**31A-27a-103 Insurer receivership laws.**

- (1) The state's insurer receivership laws consists of:
  - (a) this chapter; and
  - (b) Chapter 28, Guaranty Associations.
- (2) The laws listed in Subsection (1) shall be construed together in a manner that is consistent.

Enacted by Chapter 309, 2007 General Session

**31A-27a-104 Persons covered.**

- (1) This chapter applies to:
  - (a) an insurer who:
    - (i) is doing, or has done, an insurance business in this state; and
    - (ii) against whom a claim arising from that business may exist;
  - (b) a person subject to examination by the commissioner;
  - (c) an insurer who purports to do an insurance business in this state;
  - (d) an insurer who has an insured who is resident in this state; and
  - (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:
    - (i) under Chapter 6a, Service Contracts;
    - (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;
    - (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;
    - (iv) under Chapter 9, Insurance Fraternal; and
    - (v) under Chapter 11, Motor Clubs;
    - (vi) under Chapter 13, Employee Welfare Funds and Plans;
    - (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups;
    - (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;
    - (ix) under Chapter 37, Captive Insurance Companies Act;
    - (x) a title insurance company;
    - (xi) a prepaid health care delivery plan; and
    - (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or doing insurance business, or in the process of organizing with the intent to do insurance business in this state.
- (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply to a person licensed by the insurance commissioner as one or more of the following in this state unless the person engages in the business of insurance as an insurer:
  - (a) an insurance agency;
  - (b) an insurance producer;
  - (c) a limited line producer;
  - (d) an insurance consultant;
  - (e) a managing general agent;
  - (f) reinsurance intermediary;
  - (g) an individual title insurance producer or agency title insurance producer;
  - (h) a third party administrator;
  - (i) an insurance adjuster;
  - (j) a life settlement provider; or
  - (k) a life settlement producer.

Amended by Chapter 319, 2013 General Session

**31A-27a-105 Jurisdiction -- Venue.**

- (1)
  - (a) A delinquency proceeding under this chapter may not be commenced by a person other than the commissioner of this state.
  - (b) No court has jurisdiction to entertain, hear, or determine a delinquency proceeding commenced by any person other than the commissioner of this state.
- (2) Other than in accordance with this chapter, a court of this state has no jurisdiction to entertain, hear, or determine any complaint:
  - (a) requesting the liquidation, rehabilitation, seizure, sequestration, or receivership of an insurer; or
  - (b) requesting a stay, an injunction, a restraining order, or other relief preliminary to, incidental to, or relating to a delinquency proceeding.
- (3)
  - (a) The receivership court, as of the commencement of a delinquency proceeding under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state.
  - (b) The receivership court has original but not exclusive jurisdiction of all civil proceedings arising:
    - (i) under this chapter; or
    - (ii) in or related to a delinquency proceeding under this chapter.
- (4) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver if the person served:
  - (a) in an action resulting from or incident to a relationship with the insurer described in this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:
    - (i) written a policy of insurance for an insurer against which a delinquency proceeding is instituted; or
    - (ii) acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding is instituted;
  - (b) in an action on or incident to a reinsurance contract described in this Subsection (4)(b):
    - (i) is or has been an insurer or reinsurer who has at any time entered into the contract of reinsurance with an insurer against which a delinquency proceeding is instituted; or
    - (ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the contract;
  - (c) in an action resulting from or incident to a relationship with the insurer described in this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding is instituted;
  - (d) in an action concerning assets described in this Subsection (4)(d), is or was at the time of the institution of the delinquency proceeding against the insurer, holding assets in which the receiver claims an interest on behalf of the insurer; or
  - (e) in any action on or incident to the obligation described in this Subsection (4)(e), is obligated to the insurer in any way whatsoever.
- (5)
  - (a) Subject to Subsection (5)(b), service shall be made upon the person named in the petition in accordance with the Utah Rules of Civil Procedure.

- (b) In lieu of service under Subsection (5)(a), upon application to the receivership court, service may be made in such a manner as the receivership court directs whenever it is satisfactorily shown by the commissioner's affidavit:
  - (i) in the case of a corporation, that the officers of the corporation cannot be served because they have departed from the state or have otherwise concealed themselves with intent to avoid service;
  - (ii) in the case of an insurer whose business is conducted, at least in part, by an attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's association, or interinsurance exchange, that the individual attorney-in-fact, managing general agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because of the individual's departure or concealment; or
  - (iii) in the case of a natural person, that the person cannot be served because of the person's departure or concealment.
- (6) If the receivership court on motion of any party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the receivership court may enter an appropriate order to stay further proceedings on the action in this state.
- (7)
  - (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue arbitration except:
    - (i) as to a claim against the estate; and
    - (ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.
  - (b) A party in arbitration may bring a claim or counterclaim against the estate, but the claim or counterclaim is subject to this chapter.
- (8) An action authorized by this chapter shall be brought in the Third District Court for Salt Lake County.
- (9)
  - (a) At any time after an order is entered pursuant to Section 31A-27a-201, 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the county of the principal office of the person proceeded against.
  - (b) In the event of a transfer under this Subsection (9), the court in which the proceeding is commenced shall, upon application of the commissioner or receiver, direct its clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.
  - (c) After a transfer under this Subsection (9), the proceeding shall be conducted in the same manner as if it had been commenced in the court to which the matter is transferred.
- (10)
  - (a) Except as provided in Subsection (10)(c), a person may not intervene in a liquidation proceeding in this state for the purpose of seeking or obtaining payment of a judgment, lien, or other claim of any kind.
  - (b) Except as provided in Subsection (10)(c), the claims procedure set for this chapter constitute the exclusive means for obtaining payment of claims from the liquidation estate.
  - (c)
    - (i) An affected guaranty association or the affected guaranty association's representative may intervene as a party as a matter of right and otherwise appear and participate in any court proceeding concerning a liquidation proceeding against an insurer.
    - (ii) Intervention by an affected guaranty association or by an affected guaranty association's designated representative conferred by this Subsection (10)(c) may not constitute grounds to establish general personal jurisdiction by the courts of this state.

- (iii) An intervening affected guaranty association or the affected guaranty association's representative are subject to the receivership court's jurisdiction for the limited purpose for which the affected guaranty association intervenes.
- (11)
- (a) Notwithstanding the other provisions of this section, this chapter does not confer jurisdiction on the receivership court to resolve coverage disputes between an affected guaranty association and those asserting claims against the affected guaranty association resulting from the initiation of a receivership proceeding under this chapter, except to the extent that the affected guaranty association otherwise expressly consents to the jurisdiction of the receivership court pursuant to a plan of rehabilitation or liquidation that resolves its obligations to covered policyholders.
  - (b) The determination of a dispute with respect to the statutory coverage obligations of an affected guaranty association by a court or administrative agency or body with jurisdiction in the affected guaranty association's state of domicile is binding and conclusive as to the affected guaranty association's claim in the liquidation proceeding.
- (12) Upon the request of the receiver, the receivership court or the presiding judge of the Third District Court for Salt Lake County may order that one judge hear all cases and controversies arising out of or related to the delinquency proceeding.
- (13) A delinquency proceeding is exempt from any program maintained for the early closure of civil actions.

Enacted by Chapter 309, 2007 General Session

**31A-27a-106 Exemption from fees.**

The receiver may not be required to pay any of the following fees to a public officer of this state:

- (1) filing fees;
- (2) recording fees;
- (3) transcript fees;
- (4) copying fees;
- (5) certification fees; or
- (6) authentication fees.

Enacted by Chapter 309, 2007 General Session

**31A-27a-107 Notice and hearing on matters submitted by the receiver for receivership court approval.**

- (1)
- (a) Upon written request to the receiver, a person shall be placed on the service list to receive notice of matters filed by the receiver. The person shall include in a written request under this Subsection (1)(a) the person's address, facsimile number, or electronic mail address.
  - (b) It is the responsibility of the person requesting notice to:
    - (i) inform the receiver in writing of any changes in the person's address, facsimile number, or electronic mail address; or
    - (ii) request that the person's name be deleted from the service list.
  - (c)
    - (i) The receiver may serve on a person on the service list a request to confirm continuation on the service list by returning a form.

- (ii) The request to confirm continuation may be served periodically but not more frequently than every 12 months.
  - (iii) A person who fails to return the form described in this Subsection (1)(c) may be removed from the service list.
  - (d) Inclusion on the service list does not confer standing in the delinquency proceeding to raise, appear, or be heard on any issue.
  - (e) The receiver shall:
    - (i) file a copy of the service list with the receivership court; and
    - (ii) periodically provide to the receivership court notice of changes to the service list.
  - (f) Notice may be provided by first-class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion.
- (2) Except as otherwise provided by this chapter, notice and hearing of any matter submitted by the receiver to the receivership court for approval under this chapter shall be conducted in accordance with this Subsection (2).
- (a) The receiver:
    - (i) shall file a motion:
      - (A) explaining the proposed action; and
      - (B) the basis for the proposed action; and
    - (ii) may include any evidence in support of the motion.
  - (b) If a document, material, or other information supporting the motion is confidential, the document, material, or other information may be submitted to the receivership court under seal for in camera inspection.
  - (c)
    - (i) The receiver shall provide notice and a copy of the motion to:
      - (A) all persons on the service list; and
      - (B) any other person as may be required by the receivership court.
    - (ii) Notice may be provided by first-class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion.
    - (iii) For purposes of this section, notice is considered to be given on the day on which it is deposited with the United States Postmaster or transmitted, as applicable, to the last-known address as shown on the service list.
  - (d)
    - (i) A party in interest objecting to the motion shall:
      - (A) file an objection specifying the grounds for the objection within:
        - (I) 10 days of the day on which the notice of the filing of the motion is sent; or
        - (II) such other time as the receivership court may specify; and
      - (B) serve copies on:
        - (I) the receiver; and
        - (II) any other person served with the motion within the time period described in this Subsection (2)(d)(i).
    - (ii) In accordance with the Utah Rules of Civil Procedure, days may be added to the time for filing an objection if the notice of the motion is sent only by way of United States mail.
    - (iii) An objecting party has the burden of showing why the receivership court should not authorize the proposed action.
  - (e)
    - (i) If no objection to the motion is timely filed:
      - (A) the receivership court may:
        - (I) enter an order approving the motion without a hearing; or

- (II) hold a hearing to determine if the receiver's motion should be approved; and
  - (B) the receiver may request that the receivership court enter an order or hold a hearing on an expedited basis.
- (ii)
    - (A) If an objection is timely filed, the receivership court may hold a hearing.
    - (B) If the receivership court approves the motion and, upon a motion by the receiver, determines that the objection is frivolous or filed merely for delay or for other improper purpose, the receivership court may order the objecting party to pay the receiver's reasonable costs and fees of defending against the objection.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-27a-108 Injunctions and orders.**

- (1) The receivership court may issue an order, process, or judgment including stays, injunctions, or other orders necessary or appropriate to carry out:
  - (a) this chapter; or
  - (b) an approved rehabilitation plan.
- (2) This chapter may not be construed to limit the ability of the receiver to apply to a court other than the receivership court in any jurisdiction:
  - (a) to carry out this chapter; or
  - (b) for the purpose of pursuing claims against any person.
- (3) Except as provided in Subsections (5) and (6) or as otherwise provided in this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of:
  - (a) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, an arbitration proceeding, or other action or proceeding against the insurer:
    - (i) that was or could have been commenced before the commencement of the delinquency proceeding under this chapter; or
    - (ii) to recover a claim against the insurer that arises before the commencement of the delinquency proceeding under this chapter;
  - (b) the enforcement against the insurer or against property of the insurer of a judgment obtained before the commencement of the delinquency proceeding under this chapter;
  - (c) an act to:
    - (i) obtain or retain possession of:
      - (A) property of the insurer; or
      - (B) property from the insurer; or
    - (ii) exercise control over property or records of the insurer;
  - (d) an act to create, perfect, or enforce a lien against property of the insurer;
  - (e) an act to collect, assess, or recover a claim against the insurer that arises before the commencement of a delinquency proceeding under this chapter;
  - (f) the commencement or continuation of an action or proceeding against a reinsurer of the insurer:
    - (i) by the holder of a claim against the insurer; and
    - (ii) seeking a reinsurance recovery that is contractually due to the insurer;
  - (g) the commencement or continuation of an action or proceeding by a governmental unit to terminate or revoke an insurance license; and

- (h)
  - (i) an action described in Subsection (3)(h)(ii):
    - (A) with respect to a contract, agreement, or lease including:
      - (I) a policy;
      - (II) an insurance or reinsurance contract;
      - (III) a surety bond; or
      - (IV) a surety undertaking;
    - (B) whether or not the insurer is a party to the contract, agreement, lease, policy, bond, or undertaking; and
    - (C) if the sole basis for the action is:
      - (I) that the insurer is the subject of a delinquency proceeding;
      - (II) that one or more of the insurer's licenses have been suspended or revoked because the insurer is the subject of a delinquency proceeding; or
      - (III) both Subsections (3)(h)(i)(C)(I) and (II); and
  - (ii) as to a contract, agreement, lease, policy, bond, or undertaking described in Subsection (3)(h)(i), an action for:
    - (A) termination;
    - (B) failure to renew;
    - (C) suspension of performance;
    - (D) declaration of default;
    - (E) demand for additional, substitute, or replacement security or performance; or
    - (F) other adverse action.
- (4)
  - (a) Except as provided in Subsections (5) and (6) or as otherwise provided in this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding, including the enforcement of any judgment:
    - (i) against an insured that is or could have been commenced before the commencement of the delinquency proceeding under this chapter; or
    - (ii)
      - (A) to recover a claim against the insured that arises before or after the commencement of the delinquency proceeding under this chapter; and
      - (B) for which the insurer:
        - (I) is or may be liable under a policy of insurance; or
        - (II) is obligated to defend a party.
  - (b) Subject to Subsection (4)(c), the stay provided by this Subsection (4) terminates 90 days after the day on which the receiver is appointed unless extended by order of the receivership court:
    - (i) for good cause shown; and
    - (ii) after notice to any affected parties and any hearing the receivership court determines is appropriate.
  - (c) Notwithstanding the other provisions of this Subsection (4), any applicable statute of limitations with respect to any claim against an insured is tolled during the period of the stay provided by this Subsection (4) and any extensions.
- (5) Notwithstanding Subsection (3), the commencement of a delinquency proceeding under this chapter does not operate as a stay or prohibition of:
  - (a) except as provided in Subsection (3)(g), a regulatory action by a commissioner of a nondomiciliary state, including the suspension of a license;

- (b) a criminal action;
  - (c) an act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the act is accomplished within any relation back period under applicable law;
  - (d) a set off as permitted by Section 31A-27a-510;
  - (e) pursuit and enforcement of a nonmonetary governmental claim, judgment, or proceeding;
  - (f)
    - (i) presentment of a negotiable instrument; and
    - (ii) the giving of notice of and protesting dishonor of the negotiable instrument;
  - (g) enforcement of a right against a single beneficiary trust established pursuant to and in compliance with Section 31A-17-404;
  - (h) under or in connection with a netting agreement or qualified financial contract as provided for in Section 31A-27a-611, a right to cause:
    - (i) the netting, liquidation, set off, termination, acceleration, or close out of an obligation; or
    - (ii) enforcement of a:
      - (A) security agreement;
      - (B) security arrangement; or
      - (C) other credit enhancement or guarantee or reimbursement obligation;
  - (i) discharge by an affected guaranty association of statutory responsibilities under any statute applicable to the affected guaranty association; or
  - (j) any of the following actions:
    - (i) an audit by a governmental unit to determine tax liability;
    - (ii) the issuance to the insurer by a governmental unit of a notice of tax deficiency;
    - (iii) a demand for a tax return; or
    - (iv) the making of an assessment for any tax and issuance of a notice and demand for payment of the assessment.
- (6) Except as provided in Subsection (7):
- (a) the stay of an act against property of the insurer under Subsection (3) continues until the property is no longer property of the receivership; and
  - (b) the stay of any other act under Subsection (3) continues until the earlier of the day on which the delinquency proceeding is closed or the day on which the delinquency proceeding is dismissed.
- (7)
- (a) The receivership court may grant relief from a stay of Subsection (3) or (4), by terminating, annulling, modifying, or conditioning the stay:
    - (i) on request of a party in interest;
    - (ii) after notice and any hearing the receivership court determines appropriate; and
    - (iii)
      - (A) for cause; or
      - (B) with respect to a stay of an act against property under Subsection (3) if:
        - (I) the insurer does not have any equity in the property; and
        - (II) the property is not necessary to an effective plan.
  - (b) For the purposes of this Subsection (7), "cause" includes if:
    - (i) the receiver cancels a policy, a surety bond, or a surety undertaking;
    - (ii) the creditor is entitled, by contract or law, to require the insured or the principal to have a policy, a surety bond, or a surety undertaking; and
    - (iii) the insured or the principal fails to obtain a replacement policy, surety bond, or surety undertaking within 30 days from the date of cancellation.

- (8) In a hearing under Subsection (7), the party seeking relief from the stay has the burden of proof on each issue, which shall be established by clear and convincing evidence.
- (9)
  - (a) The estate of an insurer that is injured by a willful violation of a stay provided by this section is entitled to actual damages, including costs and attorney fees.
  - (b) In appropriate circumstances, the receivership court may impose sanctions in addition to those under Subsection (9)(a).
- (10) Notwithstanding any other provision of law, in relation to any stay or injunction under this section, a bond may not be required of:
  - (a) the commissioner; or
  - (b) a receiver.

Enacted by Chapter 309, 2007 General Session

**31A-27a-109 Statutes of limitations.**

- (1) If applicable law, an order, or an agreement fixes a period within which the insurer may commence an action, and this period is not expired before the day on which the initial petition in a delinquency proceeding is filed, the receiver may not by reason of the filing of the initial petition in a delinquency proceeding be barred from commencing the action if the receiver commences the action on or before the later of:
  - (a) the end of the period, including any suspension of the period occurring on or after the day on which the initial petition in a delinquency proceeding is filed; or
  - (b) six years after the day on which the most recent receivership order is entered.
- (2)
  - (a) Except as provided in Subsection (1), if applicable law, an order, or an agreement fixes a period within which the insurer may do an act described in Subsection (2)(b) and the period described in this Subsection (2)(a) is not expired before the date on which the initial petition in a delinquency proceeding is filed, the receiver may not by reason of the filing of the petition initiating a formal delinquency proceeding be barred from taking the act if the receiver does the act on or before the later of:
    - (i) the end of the period, including any suspension of the period occurring on or after the day on which the initial petition in a delinquency proceeding is filed; or
    - (ii) 60 days after the day on which the most recent receivership order is entered.
  - (b) This Subsection (2) applies to:
    - (i) filing, curing, or performing:
      - (A) a pleading;
      - (B) a demand;
      - (C) a notice; or
      - (D) a proof of claim or loss;
    - (ii) curing a default in a case or proceeding; or
    - (iii) performing any act similar to one described in Subsection (2)(b)(i) or (ii).
- (3) If applicable law, an order, or an agreement fixes a period for commencing or continuing a civil action in a court other than the receivership court on a claim against the insurer, and the period has not expired before the day on which the initial petition in a delinquency proceeding is filed, the period does not expire until the later of:
  - (a) the end of the period, including any suspension of the period occurring on or after the day on which the initial petition in a delinquency proceeding is filed; or

- (b) 30 days after the day on which the stay pursuant to this section with respect to the claim is terminated or expires.

Enacted by Chapter 309, 2007 General Session

**31A-27a-110 Cooperation of officers, owners, and employees.**

- (1) As used in this section:
  - (a) "Cooperate" includes to:
    - (i) reply promptly in writing to an inquiry from the commissioner or receiver requesting a reply; and
    - (ii) promptly make available to the commissioner or receiver any record, account, information, or property:
      - (A) of or pertaining to the insurer; and
      - (B) in the person's possession, custody, or control.
  - (b) "Person" includes a person who exercises control directly or indirectly over activities of the insurer through:
    - (i) a holding company; or
    - (ii) other affiliate of the insurer.
- (2) The following shall cooperate with the commissioner or receiver in a proceeding under this chapter or an investigation preliminary to a proceeding under this chapter:
  - (a) a present or former officer, manager, director, trustee, owner, or employee of an insurer;
  - (b) a present or former agent of an insurer; or
  - (c) a person with authority over or in charge of any segment of the insurer's affairs.
- (3) A person may not obstruct or interfere with the commissioner or receiver in the conduct of:
  - (a) a delinquency proceeding; or
  - (b) an investigation preliminary or incidental to a delinquency proceeding.
- (4) This section may not be construed to abridge otherwise existing legal rights, including the right to resist:
  - (a) a petition for liquidation or other delinquency proceeding; or
  - (b) other orders.
- (5)
  - (a) A person described in Subsection (5)(b) is:
    - (i) guilty of a class B misdemeanor, except that the fine may exceed \$1,000 but may not exceed \$10,000; or
    - (ii) after a hearing, subject to:
      - (A) the commissioner imposing a civil penalty that may not exceed \$10,000;
      - (B) the revocation or suspension of an insurance license issued by the commissioner; or
      - (C) a combination of Subsections (5)(a)(ii)(A) and (B).
  - (b) This Subsection (5) applies to:
    - (i) a person described in Subsection (2) who fails to cooperate with the commissioner or receiver;
    - (ii) a person who obstructs or interferes with the commissioner or receiver in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding; or
    - (iii) a person who violates an order validly issued under this chapter.

Enacted by Chapter 309, 2007 General Session

**31A-27a-111 Actions by and against the receiver.**

- (1)
  - (a) An allegation by the receiver of improper or fraudulent conduct against a person may not be the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party.
  - (b) Notwithstanding Subsection (1)(a), a third party described in this Subsection (1) is not barred by this section from seeking to establish independently as a defense that the conduct is materially and substantially related to the contractual obligation for which enforcement is sought.
- (2)
  - (a) Subject to Subsection (2)(b), a prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver:
    - (i) under a theory of:
      - (A) estoppel;
      - (B) comparative fault;
      - (C) intervening cause;
      - (D) proximate cause;
      - (E) reliance; or
      - (F) mitigation of damages; or
    - (ii) otherwise.
  - (b) Notwithstanding Subsection (2)(a):
    - (i) the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract; and
    - (ii) a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that:
      - (A) the receiver has possession or control of the property; or
      - (B) the insurer or its agents misappropriated, including commingling, the property.
  - (c) Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.
- (3) Action or inaction by an insurance regulatory authority may not be asserted as a defense to a claim by the receiver.
- (4)
  - (a) Subject to Subsection (4)(b), a judgment or order entered against an insured or the insurer in contravention of a stay or injunction under this chapter, or at any time by default or collusion, may not be considered as evidence of liability or of the quantum of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.
  - (b) Subsection (4)(a) does not apply to an affected guaranty association's claim for amounts paid on a settlement or judgment in pursuit of the affected guaranty association's statutory obligations.
- (5) The receiver may not be considered a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Enacted by Chapter 309, 2007 General Session

**31A-27a-112 Unrecorded obligations and defenses of affiliates.**

- (1) This section applies to a person who in relation to an insurer is:

- (a) an affiliate;
  - (b) a controlled or controlling person; or
  - (c) a present or former officer, manager, director, trustee, or shareholder.
- (2) In a proceeding or claim by the receiver, a person described in Subsection (1) may not assert a defense unless evidence of the defense:
- (a) is recorded in the records of the insurer at or about the time the event giving rise to the defense occurs; and
  - (b) if required by statutory accounting practices and procedures, is timely reported on the insurer's official financial statements filed with the commissioner.
- (3) A person described in Subsection (1) may not assert a claim, unless the obligation:
- (a) is recorded in the records of the insurer at or about the time the obligation is incurred; and
  - (b) if required by statutory accounting practices and procedures, is timely reported on the insurer's official financial statements filed with the commissioner.
- (4) A claim by the receiver against a person described in Subsection (1) that is made on the basis of an unrecorded or unreported transaction is not barred by this section.

Enacted by Chapter 309, 2007 General Session

**31A-27a-113 Executory contracts.**

- (1) Subject to the other provisions of this section, the receiver may assume or reject an executory contract or unexpired lease of the insurer.
- (2)
- (a) If there is a default in an executory contract or unexpired lease of the insurer, the receiver may not assume the contract or lease unless, at the time of the assumption of the contract or lease, the receiver:
    - (i) cures or provides adequate assurance that the receiver will promptly cure the default; and
    - (ii) provides adequate assurance of future performance under the contract or lease.
  - (b) This Subsection (2) does not apply to a default that is a breach of a provision relating to:
    - (i) the insolvency or financial condition of the insurer at any time before the closing of the delinquency proceeding;
    - (ii) the appointment of or taking possession by:
      - (A) a receiver in a case under this chapter; or
      - (B) a custodian before the commencement of the delinquency proceeding; or
    - (iii) the satisfaction of a penalty rate or provision relating to a default arising from a failure of the insurer to perform a nonmonetary obligation under the executory contract or unexpired lease.
- (3) A claim arising from a rejection under this section or under a plan of rehabilitation or liquidation of an executory contract or unexpired lease of the insurer that is not assumed shall be determined, and shall be treated and classified as though the claim arose before the day on which a successful petition commencing the delinquency proceeding is filed.

Enacted by Chapter 309, 2007 General Session

**31A-27a-114 Immunity and indemnification.**

- (1) For purposes of this section:
- (a) "Receiver's assistant" includes:
    - (i) a present or former special deputy or assistant special deputy engaged by contract or otherwise;

- (ii) a person whom the receiver, a special deputy, or an assistant special deputy employs to assist in a delinquency proceeding under this chapter; and
- (iii) a state employee acting with respect to a delinquency proceeding under this chapter.
- (b) "Receiver's contractor" includes a person with whom the receiver, a special deputy, or an assistant special deputy contracts to assist in a delinquency proceeding under this chapter such as:
  - (i) an attorney;
  - (ii) an accountant;
  - (iii) an auditor;
  - (iv) an actuary;
  - (v) an investment banker;
  - (vi) a financial advisor;
  - (vii) any other professional or firm who is retained or contracted with by the receiver as an independent contractor; and
  - (viii) an employee of a person described in this Subsection (1)(b).
- (2) For the purposes of this section, the following persons are entitled to immunity and indemnification, or only immunity, as applicable:
  - (a) a present or former receiver responsible for the conduct of a delinquency proceeding under this chapter;
  - (b) a present or former receiver's assistant; and
  - (c) a present or former receiver's contractor.
- (3) The receiver, a receiver's assistant, and a receiver's contractor have immunity under this chapter, as follows:
  - (a) the receiver, a receiver's assistant, and a receiver's contractor have official immunity and are immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or resulting from an alleged act, error, or omission of the receiver, a receiver's assistant, or a receiver's contractor arising out of or by reason of the receiver's, receiver's assistant's, or receiver's contractor's duties or employment;
  - (b) the receiver, a receiver's assistant, and a receiver's contractor have absolute judicial immunity and are immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver, a receiver's assistant, or a receiver's contractor arising out of or by reason of any matter that is subject to review by the receivership court after notice and opportunity to be heard, if the alleged act, error, or omission is not disapproved or disallowed by the receivership court; and
  - (c) this chapter may not be construed to provide official immunity, to provide judicial immunity, or to otherwise hold the receiver, a receiver's assistant, or a receiver's contractor immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the receiver, a receiver's assistant, or a receiver's contractor.
- (4) The receiver or a receiver's assistant is entitled to indemnification under this chapter, as follows:
  - (a) the receiver and a receiver's assistant shall be indemnified from the assets of the insurer:
    - (i) if any legal action is commenced against the receiver or a receiver's assistant:
      - (A) whether against the receiver or receiver's assistant personally or in the official capacity;
    - and

- (B) alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or a receiver's assistant arising out of or by reason of the receiver's or receiver's assistant's duties or employment;
- (ii) for all expenses, attorney fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action; and
- (iii) unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or receiver's assistant giving rise to the claim:
  - (A) does not arise out of or by reason of the receiver's or receiver's assistant's duties or employment; or
  - (B) is caused by intentional or willful and wanton misconduct;
- (b) attorney fees and related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer as they are incurred, in advance of the final disposition of the action upon receipt of an agreement by or on behalf of the receiver or receiver's assistant to repay the attorney fees and expenses if it is ultimately determined upon a final adjudication on the merits that the receiver or receiver's assistant is not entitled to immunity or indemnity under this section;
- (c) the following paid pursuant to this section are an administrative expense of the insurer, an indemnification for:
  - (i) an expense payment;
  - (ii) a judgment;
  - (iii) a settlement;
  - (iv) a decree;
  - (v) attorney fees;
  - (vi) a surety bond premium; or
  - (vii) other amounts paid or to be paid from the insurer's assets pursuant to this section;
- (d) in the event of actual or threatened litigation against a receiver or a receiver's assistant for which immunity or indemnity may be available under this section, a reasonable amount of funds which in the judgment of the receiver may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer:
  - (i) as security for the payment of indemnity; and
  - (ii) until:
    - (A) all applicable statutes of limitations run;
    - (B) all actual or threatened actions against the receiver or a receiver's assistant are completely and finally resolved; and
    - (C) all obligations under this section are satisfied;
- (e) in lieu of segregation and reserving of funds, the receiver may, in the receiver's discretion, obtain a surety bond or make other arrangements that will enable the receiver to fully secure the payment of all obligations under this section;
- (f) if a legal action against a receiver's assistant for which indemnity may be available under this section is settled before final adjudication on the merits, the receiver shall pay the settlement amount on behalf of the receiver's assistant, or indemnify the receiver's assistant for the settlement amount, unless the receiver determines that the claim:
  - (i) does not arise out of or by reason of the receiver's assistant's duties or employment; or
  - (ii) is caused by the intentional or willful and wanton misconduct of the receiver's assistant; and
- (g) in a legal action in which a claim is asserted against the receiver:
  - (i) that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the receivership court; and

- (ii) the receivership court may not approve that portion of the settlement if the receivership court determines that the claim:
  - (A) does not arise out of or by reason of the receiver's duties or employment; or
  - (B) is caused by the intentional or willful and wanton misconduct of the receiver.
- (5) Nothing contained or implied in this section shall operate, or be construed or applied to deprive the receiver, a receiver's assistant, or a receiver's contractor of any immunity, indemnity, benefits of law, rights, or any defense otherwise available.
- (6) The immunity and indemnification provided to a receiver's assistant and the immunity provided to a receiver's contractor under this section does not apply to an action by the receiver against the receiver's assistant or receiver's contractor.
- (7)
  - (a) Subsection (3) applies to any suit based in whole or in part on an alleged act, error, or omission that takes place on or after April 30, 2007.
  - (b) A legal action may not lie against the receiver or a receiver's assistant based in whole or in part on an alleged act, error, or omission that takes place before April 30, 2007, unless suit is filed and valid service of process is obtained on or after April 30, 2007, but on or before April 30, 2008.
- (8) Subsection (4) applies to a suit that is pending on or filed after April 30, 2007, without regard to when the alleged act, error, or omission takes place.

Enacted by Chapter 309, 2007 General Session

**31A-27a-115 Approval and payment of expenses.**

- (1) The receiver may pay an expense under a contract, lease, employment agreement, or other arrangement entered into by the insurer before receivership, as the receiver considers necessary for the purposes of this chapter. The receiver:
  - (a) is not required to pay an expense described in this Subsection (1) that the receiver determines is not necessary; and
  - (b) may reject a contract pursuant to Section 31A-27a-113.
- (2) Receivership expenses other than those described in Subsection (1) shall be paid as follows:
  - (a) unless the court orders otherwise in the rehabilitation or liquidation order, the receiver may submit a motion pursuant to Section 31A-27a-107 to the receivership court to approve:
    - (i) the terms of compensation of each special deputy or contractor; or
    - (ii) any other expense in excess of an amount established by this chapter;
  - (b) the receiver may, as the receiver considers appropriate, submit a motion to approve any other compensation, anticipated expense, or incurred expense not described in Subsection (2)(a);
  - (c) the receiver may pay as incurred:
    - (i) an expense not requiring receivership court approval; and
    - (ii) an expense approved in the rehabilitation or liquidation order; and
  - (d) the approval of an expense by the receivership court may not prejudice the right of the receiver to seek recovery, recoupment, disgorgement, or reimbursement of a fee based on contract or a cause of action recognized in law or in equity.
- (3) On an annual or more frequent basis, the receiver shall submit to the receivership court a report summarizing the expenses incurred in the prior period.
- (4) Receivership court approval is not required to pay expenses incurred by the receiver in connection with the appeal of an order of the receivership court.
- (5) All expenses of receivership shall be paid from the assets of the insurer, except as provided in this Subsection (5).

- (a) If the property of the insurer does not contain sufficient cash or liquid assets to defray the expenses incurred, the commissioner may advance funds from the account established under Subsection 31A-27a-705(3).
- (b) An amount advanced shall be repaid to the account out of the first available money of the insurer.

Enacted by Chapter 309, 2007 General Session

**31A-27a-116 Financial reporting.**

- (1)
  - (a) The receiver shall comply with all requirements for receivership financial reporting in this section and as may be specified by the commissioner by rule or ordered by the court within:
    - (i) 180 days after the day on which the receivership court enters an order of receivership; and
    - (ii) 45 days following each calendar quarter after the period specified in Subsection (1)(a)(i).
  - (b) The rule described in this Subsection (1) shall:
    - (i) comply with this section;
    - (ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (iii) require the receiver to file any financial report with the receivership court in addition to any other person specified in the rule.
  - (c) A financial report shall include, at a minimum, a statement of:
    - (i) the assets and liabilities of the insurer;
    - (ii) the changes in those assets and liabilities; and
    - (iii) all funds received or disbursed by the receiver during that reporting period.
  - (d) The receiver may qualify a financial report or provide notes to the financial statement for further explanation.
  - (e) The receivership court may order the receiver to provide any additional information as the receivership court considers appropriate.
- (2) Each affected guaranty association shall file one or more reports with the liquidator:
  - (a)
    - (i) within 180 days after the day on which the receivership court enters an order of liquidation; and
    - (ii)
      - (A) within 45 days following each calendar quarter after the period described in Subsection (2)(a)(i); or
      - (B) at an interval:
        - (I) agreed to between the liquidator and the affected guaranty association; or
        - (II) required by the receivership court; and
  - (b) in no event less than annually.
- (3) For good cause shown, the receivership court may grant:
  - (a) relief for an extension or modification of time to comply with Subsection (1) or (2); or
  - (b) such other relief as may be appropriate.

Amended by Chapter 244, 2015 General Session

**31A-27a-117 Records.**

- (1)
  - (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested with title to all of the records of the insurer:

- (i) of whatever nature;
  - (ii) in whatever medium;
  - (iii) wherever located; and
  - (iv) regardless of whether the item is in the custody and control of:
    - (A) a third party administrator;
    - (B) a managing general agent;
    - (C) an attorney; or
    - (D) other representatives of the insurer.
  - (b) The receiver may immediately take possession and control of:
    - (i) all of the records of the insurer; and
    - (ii) the premises where the records are located.
  - (c) At the request of the receiver, a third party administrator, managing general agent, attorney, or other representatives of the insurer shall release all records of the insurer to:
    - (i) the receiver; or
    - (ii) the receiver's designee.
  - (d) With the receiver's approval, an affected guaranty association with an obligation under a policy issued by the insurer may take actions necessary to obtain directly from a third party administrator, managing general agent, attorney, or other representative of the insurer all records pertaining to the insurer's business that are appropriate or necessary for the affected guaranty association to fulfill its statutory obligations.
- (2) The receiver may certify a record of a delinquent insurer described in Subsection (1) and a record of the receiver's office created and maintained in connection with a delinquent insurer, as follows:
- (a) a record of a delinquent insurer may be certified by the receiver in an affidavit stating that the record is a true and correct copy of the record of the insurer that is received from the custody of the insurer, or found among the insurer's effects; or
  - (b) a record created by or filed with the receiver's office in connection with a delinquent insurer may be certified by the receiver's affidavit stating that the record is a true and correct copy of the record maintained by the receiver's office.
- (3)
- (a) An original record or copy of a record certified under Subsection (2):
    - (i) when admitted in evidence is prima facie evidence of the facts disclosed; and
    - (ii) is admissible in evidence in the same manner as a document described in Utah Rules of Evidence, Rule 902(1).
  - (b) The receivership court may consider the certification of a record by the receiver pursuant to this section as satisfying the requirements of Utah Rules of Evidence, Rule 803(6).
- (4) A record of a delinquent insurer held by the receiver:
- (a) is not a record of the department for any purposes; and
  - (b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

**31A-27a-118 Commissioner's reports.**

- (1) The commissioner shall include in the commissioner's annual report:
- (a) the names of the insurers proceeded against under Sections 31A-27a-207 and 31A-27a-901;
  - (b) those facts which indicate in reasonable detail the commissioner's formal proceedings under this chapter; and

- (c) those facts which generally explain the use and effectiveness of proceedings under Chapter 27, Part 5, Administrative Actions, and Section 31A-27a-901.
- (2) The commissioner as receiver shall make and file annual reports and any other required reports for an insurer proceeded against under Sections 31A-27a-207 and 31A-27a-901 in the manner, in the form, and within the time required by law of an insurer authorized to do business in this state.

Renumbered and Amended by Chapter 309, 2007 General Session

**31A-27a-119 Delinquency proceeding commenced before April 30, 2007.**

This chapter does not apply to a delinquency proceeding ongoing on April 30, 2007.

Enacted by Chapter 309, 2007 General Session

**31A-27a-120 Severability.**

If any provision of this chapter or the application of this chapter to any person or circumstance is for any reason held invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Enacted by Chapter 309, 2007 General Session