

Part 9 Interstate Relations

31A-27a-901 Ancillary conservation of foreign insurers.

- (1) The commissioner may initiate an action against a foreign insurer pursuant to Section 31A-27a-201 on any of the grounds stated in that section or on the basis that:
 - (a) any of the foreign insurer's property is sequestered, garnished, or seized by official action in its domiciliary state or in any other state;
 - (b)
 - (i) the foreign insurer's certificate of authority to do business in this state is revoked or a certificate of authority is never issued; and
 - (ii) there is a resident of this state with an unpaid claim or in-force policy; or
 - (c) it is necessary to enforce a stay under Chapter 28, Guaranty Associations.
- (2) If a domiciliary receiver is appointed, the commissioner may initiate an action against a foreign insurer under this section only with the consent of the domiciliary receiver.
- (3)
 - (a) An order entered pursuant to this section shall appoint the commissioner as conservator.
 - (b) The conservator's title to assets shall be limited to the insurer's property and records located in this state.
- (4)
 - (a) Notwithstanding Subsection 31A-27a-201(3), the conservator shall hold and conserve the assets located in this state until:
 - (i) the commissioner in the insurer's domiciliary state appoints its receiver; or
 - (ii) an order terminating conservation is entered under Subsection (7).
 - (b) Once a domiciliary receiver is appointed, the conservator shall turn over to the domiciliary receiver all property subject to an order under this section.
- (5) The conservator may liquidate the property of the insurer that may be necessary to cover the costs incurred in the initiation or administration of a proceeding under this section.
- (6)
 - (a) The court in which an action under this section is pending may issue a finding of insolvency or an ancillary liquidation order.
 - (b) An ancillary liquidation order shall be entered for the limited purposes of:
 - (i) liquidating assets in this state to pay costs under Subsection (5); or
 - (ii) activating applicable guaranty associations in this state to pay valid claims that are not being paid by the insurer.
- (7) The conservator may at any time petition the receivership court for an order terminating an order entered under this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-902 Domiciliary receivers appointed in other states.

- (1)
 - (a) A domiciliary receiver appointed in another state is vested by operation of law with title to, and may summarily take possession of, all property and records of the insurer in this state.
 - (b) Notwithstanding any other provision of law regarding special deposits, a special deposit held in this state for a guaranty association in this state as the only beneficiary shall be, upon the entry of an order of liquidation with a finding of insolvency, distributed to the guaranty

- association in this state as early access distributions, subject to Section 31A-27a-704, in relation to the lines of business for which the special deposit is made.
- (c) The holder of a special deposit shall account to the domiciliary receiver for all distributions from the special deposit at the time of the distribution.
 - (d) The following shall be given full faith and credit in this state:
 - (i) a statutory provision of another state;
 - (ii) an order entered by a court of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer; and
 - (iii) a related proceeding in another state.
 - (e) For purposes of this chapter, another state means any state other than this state.
 - (f) This state shall treat all foreign states as reciprocal states.
- (2) The commissioner shall immediately transfer title to and possession of all property of the insurer under the commissioner's control to a domiciliary receiver:
- (a) upon appointment of the domiciliary receiver in another state;
 - (b) unless otherwise agreed by the domiciliary receiver; and
 - (c) including all statutory general or special deposits other than special deposits where that state's guaranty association is the only beneficiary.
- (3)
- (a) Except as provided in Subsection (1), the domiciliary receiver shall handle a special deposit or special deposit claim in accordance with the statutes pursuant to which the special deposit is required and applicable federal law.
 - (b) All amounts in excess of the estimated amount necessary to administer the special deposit and pay the unpaid special deposit claims shall be considered general assets of the estate.
 - (c)
 - (i) Subject to Subsection (3)(c)(ii), if there is a deficiency in a special deposit so that a claim secured by the special deposit is not fully discharged from the special deposit, the claimant may share in the general assets of the insurer to the extent of the deficiency at the same priority as other claimants in the claimant's class of priority under Section 31A-27a-701.
 - (ii) The sharing described in Subsection (3)(c)(i) shall be deferred until the other claimants of the class are paid percentages of their claims equal to the percentage paid from the special deposit.
 - (iii) The intent of Subsection (3)(c)(ii) is to equalize to the extent provided in this Subsection (3) the advantage gained by the security provided by the special deposit.

Enacted by Chapter 309, 2007 General Session