

31A-27a-516 Reinsurance recoverable trust provisions.

(1) As used in this section:

- (a) "Beneficiary" means the domiciliary insurance commissioner, as liquidator of the insurer for whose sole benefit a reinsurance recoverable trust is established.
- (b) "Grantor" means the reinsurer who has established a reinsurance recoverable trust for the sole benefit of the beneficiary.
- (c) "Qualified United States financial institution" means an institution that:
 - (i)
 - (A) is organized under the laws of the United States or any state of the United States; or
 - (B) in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state of the United States;
 - (ii) is granted authority to operate with fiduciary powers; and
 - (iii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.
- (d) "Reinsurance recoverable trust" means a trust established pursuant to Section 31A-27a-515.

(2)

- (a) The trustee of a reinsurance recoverable trust shall be a qualified United States financial institution.
- (b) The trust agreement governing a reinsurance recoverable trust shall:
 - (i) be entered into by the beneficiary, the grantor, and a trustee;
 - (ii) create a trust account into which assets shall be deposited in accordance with Section 31A-27a-515;
 - (iii) provide that the beneficiary may withdraw assets from the trust only:
 - (A)
 - (I) on the basis of a filed claim allowed pursuant to Section 31A-27a-603 or 31A-27a-605;
 - (II) where the grantor is notified, in writing, of the allowance of the claim;
 - (III) to the extent that the amount to be withdrawn exceeds any setoff permitted by Section 31A-27a-510 due to the grantor; and
 - (IV) when 60 days expires during which the grantor fails to:
 - (Aa) pay the claim; or
 - (Bb) subject to and without derogation from Section 31A-27a-512, which at all times governs and remains binding on the reinsurer, file notice of a written dispute with respect to the claim under and in terms of the reinsurance agreement; or
 - (B) if the beneficiary complies with any different or other terms and conditions mutually agreed to by the beneficiary and the grantor in the trust agreement;
 - (iv) require the trustee to:
 - (A) receive assets and hold all assets at the trustee's office in the United States in a safe place;
 - (B) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person;
 - (C) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter; and
 - (D) notify the grantor and the beneficiary within 10 days of a deposit to or withdrawal from the trust account;
 - (v) be made subject to and governed by the laws of this state;

- (vi) prohibit the invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;
 - (vii) provide that the trustee is liable for the trustee's negligence, willful misconduct, or lack of good faith;
 - (viii) subject to Subsection (2)(c), provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the day on which the beneficiary and grantor receive the notice;
 - (ix) subject to Subsection (2)(c), provide that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the day on which the trustee and the beneficiary receive the notice;
 - (x) provide that the grantor has the full and unqualified right to vote any shares of stock in the trust account except that, subject to other provisions of this section, an interest or dividend paid on shares of stock or other obligation in the trust account shall remain in the trust;
 - (xi) specify categories of investments reasonably acceptable to the beneficiary;
 - (xii) authorize the trustee to invest funds and to accept substitutions, by the grantor, that the trustee determines are at least equal in market value to the assets withdrawn provided that no investment or substitution shall be made without prior approval from the beneficiary, which may not be unreasonably or arbitrarily withheld;
 - (xiii) subject to Subsection (2)(d), provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred;
 - (xiv) specify the types of assets that may be included in the trust account:
 - (A) which shall consist only of:
 - (I) cash in United States dollars;
 - (II) certificates of deposit issued by a United States bank and payable in United States dollars;
 - (III) investments permitted by this state's insurance law; or
 - (IV) any combination of the types specified by this Subsection (2)(b)(xiv)(A);
 - (B) except that if investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust, may not exceed 5% of total investments; and
 - (C) subject to the assets deposited in the trust account being valued according to the asset's current fair market value;
 - (xv) give the grantor the right to seek approval from the beneficiary, which may not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the grantor, if:
 - (A) the grantor, at the time of withdrawal, replaces the withdrawn assets with other qualified assets so as to maintain at all times the deposit in the required amount; or
 - (B) after withdrawal and transfer, the market value of the trust account is no less than 102% of the award made pursuant to Subsection 31A-27a-515(8)(a);
 - (xvi) provide for the return of any amount withdrawn in excess of the actual amounts required for:
 - (A) payment of reported allowed claims under Subsection (2)(b)(iii); and
 - (B) interest payments at a rate not in excess of the prime rate of interest on the excess amounts withdrawn; and
 - (xvii) provide for termination of the reinsurance recoverable trust in accordance with Subsection (6).
- (c) Notwithstanding Subsection (2)(b)(viii) or (ix), a resignation or removal may not be effective until:

- (i) a successor trustee is appointed and approved by the beneficiary and the grantor; and
 - (ii) all assets in the trust are transferred to the new trustee.
 - (d) Notwithstanding Subsection (2)(b)(xiii), a transfer may be conditioned upon the trustee receiving, before or simultaneously with, other specified assets.
 - (e) Subsection (2)(b) may not be construed to alter the rights or obligations of the parties pursuant to contractual and statutory provisions providing for notice and the determination of a claim.
- (3) The grantor shall, before depositing assets with the trustee, execute assignments or endorsements in blank, or transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the beneficiary, or the trustee upon the direction of the beneficiary, may whenever necessary negotiate these assets without consent or signature from the grantor or any other person.
- (4)
- (a) Without derogating Section 31A-27a-512, the grantor or the beneficiary may request that the receivership court review the amount held if:
 - (i) the grantor and beneficiary fail to reach agreement on the extent, if any, to which supplementation or reduction of a reinsurance recoverable trust should be occasioned;
 - (ii)
 - (A) the reinsurance recoverable trust is exhausted; or
 - (B) the reinsurance recoverable trust is insufficient to respond to claims allowed pursuant to Section 31A-27a-603 or 31A-27a-605; and
 - (iii) the grantor or the beneficiary believe that the amount held in the reinsurance recoverable trust is either deficient or overstated.
 - (b) The review described in this Subsection (4) shall be conducted applying procedures and terms as the receivership court shall, in its sole discretion, direct.
- (5) A reinsurance recoverable trust shall terminate upon the earlier of:
- (a) receivership court approval of a voluntary commutation between the grantor and the beneficiary pursuant to Subsection 31A-27a-515(2);
 - (b) the mutual agreement of the grantor and the beneficiary; or
 - (c) a finding by the receivership court that the grantor has discharged its liabilities to the beneficiary.
- (6) Upon termination of a reinsurance recoverable trust, all assets not previously withdrawn by the beneficiary, pursuant to Subsection (2)(b)(iii), shall, with written approval of the beneficiary, be delivered to the grantor.

Amended by Chapter 345, 2008 General Session