

31A-28-207 Powers and duties of the association.

- (1)
- (a) The association is obligated on the amount of the covered claims:
 - (i) existing prior to the order of liquidation; and
 - (ii) arising:
 - (A) within 30 days after the order of liquidation; or
 - (B)
 - (I) before the policy expiration date if it is less than 30 days after the order of liquidation; or
 - (II) before the insured replaces the policy or causes its cancellation, if the insured does so within 30 days of the order of liquidation.
 - (b) The obligation under Subsection (1)(a) includes only that amount of each covered claim that is less than \$300,000.
 - (c) A claim under a personal lines policy for unearned premiums shall include only those claims that exceed \$100 in amount, subject to a maximum of \$10,000 per policy.
 - (d) The association shall pay the full amount of any covered claim arising out of a workers' compensation policy. The association is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.
 - (e) Any obligation of the association to defend an insured on a covered claim shall cease:
 - (i) upon payment by the association, as part of a settlement releasing the insured; or
 - (ii) on a judgment, of the lesser of:
 - (A) the association's covered claim obligation limit; or
 - (B) the applicable policy limit.
 - (f) The association:
 - (i) is considered as the insurer only to the extent of its obligation on the covered claims, subject to the limitations provided in this part;
 - (ii) has all the rights, duties, and obligations of the insolvent insurer as if the insurer had not yet become insolvent, including the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations; and
 - (iii) may not be considered the insolvent insurer for any purpose relating to whether the association is subject to personal jurisdiction in the courts of any state.
 - (g)
 - (i) Notwithstanding any other provisions of this part, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to or on behalf of a particular insured and its affiliates on covered claims shall cease when:
 - (A) a total amount of \$10,000,000 has been paid to or on behalf of the insured and its affiliates on covered claims by the association or a similar association; and
 - (B) all payments on covered claims arise under one or more policies of a single insolvent insurer.
 - (ii) The association may establish a plan to allocate the amounts payable by the association in a manner the association considers equitable if the association determines that:
 - (A) there is more than one claimant asserting a covered claim against:
 - (I) the association;
 - (II) a similar association; or
 - (III) a property or casualty insurance security fund in another state; and
 - (B) all claims arise under the policy or policies of a single insolvent insurer.
 - (h) The association shall assess member insurers amounts necessary to pay:

- (i) the obligations of the association under Subsection (1)(a), as limited by Subsections (1)(e) through (g), subsequent to the liquidation of an insolvent insurer;
 - (ii) the expenses of handling covered claims subsequent to the liquidation of an insolvent insurer;
 - (iii) the cost of examinations under Section 31A-28-214; and
 - (iv) other expenses authorized by this part.
- (i)
- (i) The association shall:
 - (A) investigate claims brought against the association; and
 - (B) adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.
 - (ii) The association is not bound by a settlement, release, compromise, waiver, or judgment executed or entered into by the insolvent insurer:
 - (A) less than 12 months before the entry of an order of liquidation; or
 - (B) more than 12 months before the entry of an order of liquidation if the settlement, release, compromise, waiver, or judgment is:
 - (I) based on a claim that is not a covered claim; or
 - (II) the result of fraud, collusion, default, or failure to defend.
 - (iii) The association may assert all defenses available including defenses applicable to determining and enforcing the association's statutory rights and obligations to a claim.
 - (iv) The association may appoint and direct legal counsel retained under a liability insurance policy for the defense of a covered claim.
- (j)
- (i) The association shall handle claims through:
 - (A) its employees;
 - (B) one or more insurers; or
 - (C) other persons designated as servicing facilities.
 - (ii) Designation of a servicing facility is subject to the approval of the commissioner, but this designation may be declined by a member insurer.
- (k) The association shall:
- (i) reimburse each servicing facility for:
 - (A) obligations of the association paid by the facility; and
 - (B) expenses incurred by the facility while handling claims on behalf of the association; and
 - (ii) pay the other expenses of the association as authorized by this title.
- (2) The association may:
- (a) employ or retain the persons, including private legal counsel, necessary to handle claims and perform other duties of the association;
 - (b) borrow funds necessary to implement the purposes of this part in accord with the plan of operation;
 - (c) sue or be sued;
 - (d) negotiate and become a party to the contracts necessary to carry out the purpose of this part;
 - (e) perform any other acts necessary or proper to accomplish the purposes of this chapter; or
 - (f) refund to the member insurers, in proportion to the contribution of each member insurer to the association account, the amount that the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that:
 - (i) the assets of the association in the association account exceed the liabilities as estimated by the board of directors for the coming year; and
 - (ii) the excess assets are not needed for other purposes of this part.

- (3) For a refund due to a member insurer for an assessment that has been offset against premium taxes, the association may pay the amount of the refund directly to the State Tax Commission.
- (4) The courts of the state shall have exclusive jurisdiction over all actions brought against the association that relate to or arise out of this part.
- (5)
 - (a) Any person recovering under this part is considered to have assigned that person's rights under the policy to the association to the extent of that person's recovery from the association.
 - (b) Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent the person would have been required to cooperate with the insolvent insurer.
 - (c) Except as provided in Subsection (5)(e), the association has no cause of action against the insured of the insolvent insurer for any sums the association has paid out except those causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.
 - (d) When an insolvent insurer operates on a plan with assessment liability, payments of claims of the association do not reduce the liability for unpaid assessments of the insurer to:
 - (i) the receiver;
 - (ii) liquidator; or
 - (iii) statutory successor.
 - (e) The association may recover from the following persons the amount of any "covered claim" paid on behalf of that person pursuant to this part:
 - (i) any insured whose:
 - (A) net worth on December 31 of the year next preceding the date the insurer becomes insolvent, exceeds \$25,000,000; and
 - (B) liability obligations to other persons are satisfied in whole or in part by payments made under this part; and
 - (ii) any person:
 - (A) who is an affiliate of the insolvent insurer; and
 - (B) whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.
 - (f)
 - (i) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by:
 - (A) a determination of a covered claim eligibility under this part; and
 - (B) a settlement of a covered claim by the association or a similar organization in another state.
 - (ii) The court having jurisdiction shall grant settled claims a priority equal to that which the claimant would have been entitled to in the absence of this part, against the assets of the insolvent insurer.
 - (g) The association or any similar organization in another state shall:
 - (i) be recognized as a claimant in the liquidation of an insolvent insurer for any amounts paid on a covered claim obligation as determined under this part or a similar law in another state; and
 - (ii) receive dividends or distributions at the priority set forth in Section 31A-27a-701.
 - (h)
 - (i) The association shall periodically file with the receiver or liquidator of the insolvent insurer:
 - (A) statements of the covered claims paid by the association; and
 - (B) estimates of anticipated claims on the association.

- (ii) The filing under this Subsection (5)(h) preserves the rights of the association for claims against the assets of the insolvent insurer.
- (i) The association need not pay any claim filed after the final date under Sections 31A-27a-406 and 31A-27a-601, or similar statutes of other states, for filing the same type of claim with the liquidator of the insolvent insurer.

Amended by Chapter 309, 2007 General Session