

Effective 5/14/2019

31A-27a-512.1 Indemnitor liability.

- (1)
 - (a) Except as otherwise provided in this chapter, the amount recoverable by the receiver from an indemnitor may not be reduced as a result of a delinquency proceeding with a finding of insolvency, regardless of any provision in the indemnity contract or other agreement.
 - (b) To the extent an agreement, written or oral, conflicts with or is not in strict compliance with this section, the agreement is unenforceable.
 - (c) Except as expressly provided in this section, a person who is not the receiver, including a creditor or third-party beneficiary, does not have a right to indemnity proceeds from any indemnitor of the insolvent insurer:
 - (i) on the basis of any agreement, written or oral; or
 - (ii) pursuant to an action or cause of action seeking any equitable or legal remedy.
 - (d) This section applies to all the insurer's indemnity contracts.
- (2) The amount recoverable by the liquidator from an indemnitor is payable under one or more contract of indemnity on the basis of:
 - (a) proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver, to the extent of payment; or
 - (b) the allowance of the claim pursuant to:
 - (i) Section 31A-27a-608;
 - (ii) an order of the receivership court; or
 - (iii) a plan of rehabilitation.
- (3) If an insurer takes credit for an indemnity contract in a filing or submission made to the commissioner and the indemnity contract does not contain the provisions required with respect to the obligations of indemnitor in the event of insolvency of the principal, the indemnity contract is considered to contain the provisions required with respect to:
 - (a) the obligations of indemnitors in the event of insolvency of the principal in order to obtain indemnity; or
 - (b) other applicable statutes.
- (4) An indemnity contract that under Subsection (3) is considered to contain certain provisions, is considered to contain a provision that:
 - (a) in the event of insolvency and the appointment of a receiver, the indemnity obligation is payable to the indemnified insurer or to its receiver without diminution because of the insolvency or because the receiver fails to pay all or a portion of the claim;
 - (b) payment shall be made upon:
 - (i) to the extent of the payment, proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver; or
 - (ii) the allowance of the claim pursuant to:
 - (A) Section 31A-27a-608;
 - (B) an order of the receivership court; or
 - (C) a plan of rehabilitation; and
 - (c) if an indemnitor does not pay the amount billed by the receiver within 60 days after the mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the statutory legal rate described in Section 15-1-1, except that all or a portion of the interest may be waived.
- (5)
 - (a) The receiver shall notify in writing, in accordance with the terms of the indemnity contract, each indemnitor obligated in relation to an indemnified claim or the pendency of an indemnified claim against the indemnified company.

- (b)
 - (i) The receiver's failure to give notice of a pending claim does not excuse the obligation of the indemnitor, unless the indemnitor is prejudiced by the receiver's failure.
 - (ii) If the indemnitor is prejudiced by the receiver's failure, the indemnitor's obligation is reduced only to the extent of the prejudice.
- (c) In a proceeding in which an indemnified claim is to be adjudicated, an indemnitor may interpose, at its own expense, any one or more defenses that the indemnitor considers available to the indemnified company or its receiver.
- (6) The entry of an order of rehabilitation or liquidation is not:
 - (a) a breach or an anticipatory breach of an indemnity contract; or
 - (b) grounds for retroactive revocation or retroactive cancellation of an indemnity contract by the indemnifier.

Enacted by Chapter 193, 2019 General Session