

508C.13 Miscellaneous provisions.

1. **This chapter** does not reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability other than the plan of **this chapter**.

2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under **section 508C.8**. Records of the negotiations or meetings shall be made public pursuant to **chapter 22** only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. **This subsection** does not limit the duty of the association to render a report of its activities under **section 508C.14**.

3. For the purpose of carrying out its obligations under **this chapter**, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies or contracts reduced by any amounts to which the association is entitled pursuant to its subrogation rights under **section 508C.8, subsection 7**. Assets of the impaired or insolvent insurer attributable to covered policies or contracts shall be used to continue all covered policies or contracts and pay all contractual obligations of the impaired or insolvent insurer as required by **this chapter**. As used in **this subsection**, “*assets attributable to covered policies or contracts*” means that proportion of the assets which the reserves that should have been established for the policies or contracts bear to the reserves that should have been established for all policies of insurance or health benefit plans written by the impaired or insolvent insurer.

4. *a.* Prior to the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, contract owners, certificate holders, enrollees, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. When considering the contributions, consideration shall be given to the welfare of the contract owners, certificate holders, enrollees, and policy owners of the continuing or successor member insurer.

b. A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until the total amount of valid claims of the association and of similar associations of other states for funds expended in carrying out its powers and duties under **section 508C.8** with respect to the member insurer have been fully recovered by the association and the similar associations.

5. *a.* Subject to the limitations of paragraphs “*b*”, “*c*”, and “*d*”, if an order for liquidation or rehabilitation of a member insurer domiciled in this state has been entered, the receiver appointed under the order may recover, on behalf of the member insurer, from any affiliate that controlled it, the amount of distributions other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation.

b. Distributions are not recoverable if the member insurer shows that when paid the distributions were lawful and reasonable and that the member insurer did not know and could not reasonably have known that the distributions might adversely affect the ability of the member insurer to fulfill its contractual obligations.

c. A person who was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions received. A person who was an affiliate that controlled the member insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if the distributions had been paid immediately. If two or more persons are liable with respect to the same distributions, the persons are jointly and severally liable.

d. The maximum amount recoverable under **this subsection** is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

e. If a person liable under paragraph “*c*” is insolvent, all its affiliates that controlled it at

the time the dividend was paid are jointly and severally liable for a resulting deficiency in the amount recovered from the insolvent affiliate.

87 Acts, ch 223, §13; 90 Acts, ch 1234, §26; 2019 Acts, ch 12, §28, 29, 35, 36; 2020 Acts, ch 1063, §276

Referred to in §22.7(23), 508C.8

2019 amendments apply beginning March 29, 2019; 2019 Acts, ch 12, §35, 36
Subsection 3 amended