

31A-5-211 Minimum capital or permanent surplus requirements.

(1)

- (a) Except as provided in Subsections (4) and (5), insurers being organized or operating under this chapter shall maintain minimum capital or permanent surplus for a mutual, in amounts specified in Subsection (2).
- (b) The certificate of authority issued under Section 31A-5-212 does not permit an insurer to transact types of insurance for which the insurer does not have the required minimum capital or permanent surplus for a mutual, in at least the amounts specified under Subsection (2).
- (c) Minimum capital and permanent surplus requirements under this section are based upon all types of insurance transacted by the insurer in any and all areas which it operates, whether or not only a portion of those types of insurance is or is to be transacted in this state.

(2) The minimum capital, or permanent surplus for a nonassessable mutual, is as follows for the indicated types of insurance:

- (a) life, annuity, accident and health, or any combination of these.....\$400,000
- (b) subject to an aggregate maximum of \$1,000,000 for more than one of the following types of coverages:
 - (i) property insurance.....200,000
 - (ii) surety insurance.....300,000
 - (iii) bail bonds insurance only.....100,000
 - (iv) marine and transportation insurance.....200,000
 - (v) vehicle liability insurance, residential dwelling liability insurance, or both.....400,000
 - (vi) liability insurance.....600,000
 - (vii) workers' compensation insurance.....300,000
- (c) title insurance.....200,000
- (d) professional liability insurance, excluding medical malpractice.....700,000
- (e) professional liability, including medical malpractice.....1,000,000
- (f) all types of insurance, except life, annuity, or title.....2,000,000

(3) Prior to beginning operations, an insurer licensed under this chapter shall have total adjusted capital in excess of the company action level RBC as defined in Subsection 31A-17-601(8)(b).

(4)

- (a) Subject to Subsections (4)(b) and (4)(c), an insurer holding a valid certificate of authority to transact insurance in this state prior to July 1, 1986, continues to be authorized to transact the same kinds of insurance as permitted by that certificate of authority, if the insurer maintains not less than the amount of minimum capital or permanent surplus required for that authority under the laws of this state in force immediately prior to July 1, 1986.
- (b) If, after July 1, 1986, an insurer ever has minimum capital or permanent surplus that meets or exceeds the requirements of Subsections (2) and (3), then Subsection (4)(a) is inapplicable to that insurer and it shall comply with Subsections (2) and (3).
- (c) Any insurer satisfying the minimum capital or permanent surplus requirement through application of Subsection (4)(a) shall comply with Subsections (2) and (3) by July 1, 1990.
- (d) Beginning July 1, 1987, former county mutuals shall comply with the capital and surplus requirements of this section.

(5)

- (a)
 - (i) An assessable mutual may be organized under this chapter, but it may not issue life insurance or annuities.
 - (ii) An assessable mutual need not have a permanent surplus if the assessment liability of its policyholders is unlimited and all insurance policies clearly state that.

- (iii) If assessments are limited to a specified amount or a specified multiple of annual advance premiums, the minimum permanent surplus is the amount that would be required under Subsections (2) and (3) if the corporation were not assessable, reduced by an amount that reasonably reflects the value of the policyholders' assessment liability in satisfying the financial needs of the corporation.
- (iv) The liability of members in an assessable mutual is joint and several up to the limits provided by:
 - (A) the articles of incorporation of the assessable mutual; or
 - (B) this title.

(b)

- (i) Except as provided in Subsections (5)(c) and (d), a certificate of authority may not be issued to an assessable mutual until it has at least 400 bona fide applications for insurance from not less than 400 separate applicants, on separate risks located in this state, in each of the classes of business upon which assessments may be separately levied. A full year's premium shall be paid with each application and the aggregate premium is at least \$50,000 for each class.
- (ii) If at any time while the corporation is an assessable mutual, the business plan is amended to include an additional class of business on which assessments may be separately levied, identical requirements of Subsection (5)(b)(i) are applicable to each additional class.

(c) Five or more employers may join in the formation of an assessable mutual to write only workers' compensation insurance if, instead of the requirements of Subsection (5)(b), policies are simultaneously put into effect that cover at least 1,500 employees, with no single employer having more than 1/5 of the employees insured by the assessable mutual. A full year's premium shall be paid by each employer, aggregating at least \$200,000.

(d)

- (i) The number and amount of required initial applications and premium payments may be reduced by substituting surplus for the applications or premium payments.
- (ii) The commissioner shall determine the reduction in required initial applications and premium payments that is appropriate for a given amount of surplus.
- (iii) The insurer shall continue to be assessable until conversion under Subsection 31A-5-507(1) to a nonassessable mutual.

(6)

- (a) The capital or permanent surplus requirements of Subsection (2) apply to persons seeking certificates of authority under this chapter to write reinsurance.
- (b) This Subsection (6) may not be construed as requiring reinsurers to obtain a certificate of authority.
- (c) Section 31A-17-404 imposes alternate safety prerequisites to reserve credit being granted for reinsurance ceded to a reinsurer without a certificate of authority.

Amended by Chapter 123, 2005 General Session

Effective 5/12/2020

31A-23a-1001 Definitions.

As used in this part:

- (1) "Affiliated business" means the gross transaction revenue of a title entity's title insurance business in the state that is the result of an affiliated business arrangement.
- (2) "Affiliated business arrangement" means the same as that term is defined in 12 U.S.C. Sec. 2602, except the services that are the subject of the arrangement do not need to involve a federally related mortgage loan.
- (3) "Applicable percentage" means:
 - (a) on February 1, 2020, through January 31, 2021, 0.5%;
 - (b) on February 1, 2021, through January 31, 2022, 1%;
 - (c) on February 1, 2022, through January 31, 2023, 1.5%;
 - (d) on February 1, 2023, through January 31, 2024, 2%;
 - (e) on February 1, 2024, through January 31, 2025, 2.5%;
 - (f) on February 1, 2025, through January 31, 2026, 3%;
 - (g) on February 1, 2026, through January 31, 2027, 3.5%;
 - (h) on February 1, 2027, through January 31, 2028, 4%; and
 - (i) on February 1, 2028, through January 31, 2029, 4.5%.
- (4) "Associate" means the same as that term is defined in 12 U.S.C. Sec. 2602.
- (5) "Division" means the Division of Real Estate created in Section 61-2-201.
- (6) "Essential function" means:
 - (a) examining and evaluating, based on relevant law and title insurance underwriting principles and guidelines, title evidence to determine the insurability of a title and which items to include or exclude in a title commitment or title insurance policy to be issued;
 - (b) preparing and issuing a title commitment or other document that:
 - (i) discloses the status of the title as the title is proposed to be insured;
 - (ii) identifies the conditions that must be met before a title insurance policy will be issued; and
 - (iii) obligates the insurer to issue a title insurance policy if the conditions described in Subsection (6)(b)(ii) are met;
 - (c) clearing underwriting objections and taking the necessary steps to satisfy any conditions to the issuance of a title insurance policy;
 - (d) preparing the issuance of a title insurance policy; or
 - (e) handling the closing or settlement of a real estate transaction when:
 - (i) it is customary for a title entity to handle the closing or settlement; and
 - (ii) the title entity's compensation for handling the closing or settlement is customarily part of the payment or retention from the insurer.
- (7) "New or newly affiliated title entity" means a title entity that:
 - (a) is licensed as a title entity for the first time on or after May 14, 2019; or
 - (b)
 - (i) is licensed as a title entity before May 14, 2019; and
 - (ii) enters into an affiliated business arrangement for the first time on or after May 14, 2019.
- (8) "Producer" means the same as the term "person who is in a position to refer settlement service business" is defined in 12 C.F.R. Sec. 1024.15(c).
- (9) "RESPA" means the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.
- (10) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules promulgated thereunder.
- (11) "Sufficient capital and net worth" means:
 - (a) for a new or newly affiliated title entity:

- (i) \$100,000 for the first five years after becoming a new or newly affiliated title entity; or
- (ii) after the first five years after becoming a new or newly affiliated title entity, the greater of:
 - (A) \$50,000; or
 - (B) on February 1 of each year, an amount equal to 5% of the title entity's average annual gross revenue over the preceding two calendar years, up to \$150,000; or

(b) for a title entity licensed before May 14, 2019, who is not a new or newly affiliated title entity:

- (i) for the time period beginning on February 1, 2020, and ending on January 31, 2029, the lesser of:
 - (A) an amount equal to the applicable percentage of the title entity's average annual gross revenue over the two calendar years immediately preceding the February 1 on which the applicable percentage first applies; or
 - (B) \$150,000; and
- (ii) beginning on February 1, 2029, the greater of:
 - (A) \$50,000; or
 - (B) an amount equal to 5% of the title entity's average annual gross revenue over the preceding two calendar years, up to \$150,000.

(12) "Title entity" means:

- (a) a title licensee as defined in Section 31A-2-402; or
- (b) a title insurer as defined in Section 31A-23a-415.

(13)

- (a) "Title evidence" means a written or electronic document that identifies and describes or compiles the documents, records, judgments, liens, and other information from the public records relevant to the history and current condition of a title to be insured.
- (b) "Title evidence" does not include a pro forma commitment.

Amended by Chapter 448, 2020 General Session