

**Effective 5/13/2014**

**31A-27a-102 Definitions.**

As used in this chapter:

- (1) "Admitted assets" is as defined by and is measured in accordance with the National Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as incorporated in this state by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).
- (2) "Affected guaranty association" means a guaranty association that is or may become liable for payment of a covered claim.
- (3) "Affiliate" is as defined in Section 31A-1-301.
- (4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated or organized under the laws of a jurisdiction that is not a state.
- (5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person having a claim against an insurer whether the claim is:
  - (a) matured or not matured;
  - (b) liquidated or unliquidated;
  - (c) secured or unsecured;
  - (d) absolute; or
  - (e) fixed or contingent.
- (6) "Commissioner" is as defined in Section 31A-1-301.
- (7) "Commodity contract" means:
  - (a) a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of:
    - (i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; or
    - (ii) a board of trade outside the United States;
  - (b) an agreement that is:
    - (i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; and
    - (ii) commonly known to the commodities trade as:
      - (A) a margin account;
      - (B) a margin contract;
      - (C) a leverage account; or
      - (D) a leverage contract;
  - (c) an agreement or transaction that is:
    - (i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; and
    - (ii) commonly known to the commodities trade as a commodity option;
  - (d) a combination of the agreements or transactions referred to in this Subsection (7); or
  - (e) an option to enter into an agreement or transaction referred to in this Subsection (7).
- (8) "Control" is as defined in Section 31A-1-301.
- (9) "Delinquency proceeding" means a:
  - (a) proceeding instituted against an insurer for the purpose of rehabilitating or liquidating the insurer; and
  - (b) summary proceeding under Section 31A-27a-201.
- (10) "Department" is as defined in Section 31A-1-301 unless the context requires otherwise.
- (11) "Doing business," "doing insurance business," and "business of insurance" includes any of the following acts, whether effected by mail, electronic means, or otherwise:

- (a) issuing or delivering a contract, certificate, or binder relating to insurance or annuities:
    - (i) to a person who is resident in this state; or
    - (ii) covering a risk located in this state;
  - (b) soliciting an application for the contract, certificate, or binder described in Subsection (11)(a);
  - (c) negotiating preliminary to the execution of the contract, certificate, or binder described in Subsection (11)(a);
  - (d) collecting premiums, membership fees, assessments, or other consideration for the contract, certificate, or binder described in Subsection (11)(a);
  - (e) transacting matters:
    - (i) subsequent to execution of the contract, certificate, or binder described in Subsection (11)(a); and
    - (ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);
  - (f) operating as an insurer under a license or certificate of authority issued by the department; or
  - (g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups.
- (12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which an insurer is incorporated or organized, except that "domiciliary state" means:
- (a) in the case of an alien insurer, its state of entry; or
  - (b) in the case of a risk retention group, the state in which the risk retention group is chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.
- (13) "Estate" has the same meaning as "property of the insurer" as defined in Subsection (30).
- (14) "Fair consideration" is given for property or an obligation:
- (a) when in exchange for the property or obligation, as a fair equivalent for it, and in good faith:
    - (i) property is conveyed;
    - (ii) services are rendered;
    - (iii) an obligation is incurred; or
    - (iv) an antecedent debt is satisfied; or
  - (b) when the property or obligation is received in good faith to secure a present advance or an antecedent debt in amount not disproportionately small compared to the value of the property or obligation obtained.
- (15) Notwithstanding Section 31A-1-301, "foreign insurer" means an insurer domiciled in another state.
- (16) "Formal delinquency proceeding" means a rehabilitation or liquidation proceeding.
- (17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (18)
- (a) "General assets" include all property of the estate that is not:
    - (i) subject to a properly perfected secured claim;
    - (ii) subject to a valid and existing express trust for the security or benefit of a specified person or class of person; or
    - (iii) required by the insurance laws of this state or any other state to be held for the benefit of a specified person or class of person.
  - (b) "General assets" includes the property of the estate or its proceeds in excess of the amount necessary to discharge a claim described in Subsection (18)(a).
- (19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset Recovery, also requires the absence of:
- (a) information that would lead a reasonable person in the same position to know that the insurer is financially impaired or insolvent; and

- (b) knowledge regarding the imminence or pendency of a delinquency proceeding against the insurer.
- (20) "Guaranty association" means:
  - (a) a mechanism mandated by Chapter 28, Guaranty Associations; or
  - (b) a similar mechanism in another state that is created for the payment of claims or continuation of policy obligations of a financially impaired or insolvent insurer.
- (21) "Impaired" means that an insurer:
  - (a) does not have admitted assets at least equal to the sum of:
    - (i) all its liabilities; and
    - (ii) the minimum surplus required to be maintained by Section 31A-5-211 or 31A-8-209; or
  - (b) has a total adjusted capital that is less than its authorized control level RBC, as defined in Section 31A-17-601.
- (22) "Insolvency" or "insolvent" means that an insurer:
  - (a) is unable to pay its obligations when they are due;
  - (b) does not have admitted assets at least equal to all of its liabilities; or
  - (c) has a total adjusted capital that is less than its mandatory control level RBC, as defined in Section 31A-17-601.
- (23) Notwithstanding Section 31A-1-301, "insurer" means a person who:
  - (a) is doing, has done, purports to do, or is licensed to do the business of insurance;
  - (b) is or has been subject to the authority of, or to rehabilitation, liquidation, reorganization, supervision, or conservation by an insurance commissioner; or
  - (c) is included under Section 31A-27a-104.
- (24) "Liabilities" is as defined by and is measured in accordance with the National Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as incorporated in this state by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).
- (25)
  - (a) Subject to Subsection (21)(b), "netting agreement" means:
    - (i) a contract or agreement that:
      - (A) documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts; and
      - (B) provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with:
        - (I) one or more qualified financial contracts; or
        - (II) present or future payment or delivery obligations or payment or delivery entitlements under the agreement, including liquidation or close-out values relating to the obligations or entitlements, among the parties to the netting agreement;
    - (ii) a master agreement or bridge agreement for one or more master agreements described in Subsection (25)(a)(i); or
    - (iii) any of the following related to a contract or agreement described in Subsection (25)(a)(i) or (ii):
      - (A) a security agreement;
      - (B) a security arrangement;
      - (C) other credit enhancement or guarantee; or
      - (D) a reimbursement obligation.
  - (b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an agreement or transaction that is not a qualified financial contract, the contract or agreement described

in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to an agreement or transaction that is a qualified financial contract.

(c) "Netting agreement" includes:

- (i) a term or condition incorporated by reference in the contract or agreement described in Subsection (25)(a); or
- (ii) a master agreement described in Subsection (25)(a).
- (d) A master agreement described in Subsection (25)(a), together with all schedules, confirmations, definitions, and addenda to that master agreement and transactions under any of the items described in this Subsection (25)(d), are treated as one netting agreement.

(26)

(a) "New value" means:

- (i) money;
- (ii) money's worth in goods, services, or new credit; or
- (iii) release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the insurer or the receiver under applicable law, including proceeds of the property.
- (b) "New value" does not include an obligation substituted for an existing obligation.

(27) "Party in interest" means:

- (a) the commissioner;
- (b) a nondomiciliary commissioner in whose state the insurer has outstanding claims liabilities;
- (c) an affected guaranty association; and
- (d) the following parties if the party files a request with the receivership court for inclusion as a party in interest and to be on the service list:
  - (i) an insurer that ceded to or assumed business from the insurer;
  - (ii) a policyholder;
  - (iii) a third party claimant;
  - (iv) a creditor;
  - (v) a 10% or greater equity security holder in the insolvent insurer; and
  - (vi) a person, including an indenture trustee, with a financial or regulatory interest in the delinquency proceeding.

(28)

(a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it is called:

- (i) a written contract of insurance;
- (ii) a written agreement for or affecting insurance; or
- (iii) a certificate of a written contract or agreement described in this Subsection (28)(a).
- (b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a policy.
- (c) "Policy" does not include a contract of reinsurance.

(29) "Preference" means a transfer of property of an insurer to or for the benefit of a creditor:

- (a) for or on account of an antecedent debt, made or allowed by the insurer within one year before the day on which a successful petition for rehabilitation or liquidation is filed under this chapter;
- (b) the effect of which transfer may enable the creditor to obtain a greater percentage of the creditor's debt than another creditor of the same class would receive; and
- (c) if a liquidation order is entered while the insurer is already subject to a rehabilitation order and the transfer otherwise qualifies, that is made or allowed within the shorter of:
  - (i) one year before the day on which a successful petition for rehabilitation is filed; or
  - (ii) two years before the day on which a successful petition for liquidation is filed.

(30) "Property of the insurer" or "property of the estate" includes:

- (a) a right, title, or interest of the insurer in property:
    - (i) whether:
      - (A) legal or equitable;
      - (B) tangible or intangible; or
      - (C) choate or inchoate; and
    - (ii) including choses in action, contract rights, and any other interest recognized under the laws of this state;
  - (b) entitlements that exist before the entry of an order of rehabilitation or liquidation;
  - (c) entitlements that may arise by operation of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights; and
  - (d)
    - (i) records or data that is otherwise the property of the insurer; and
    - (ii) records or data similar to those described in Subsection (30)(d)(i) that are within the possession, custody, or control of a managing general agent, a third party administrator, a management company, a data processing company, an accountant, an attorney, an affiliate, or other person.
- (31) Subject to Subsection 31A-27a-611(10), "qualified financial contract" means any of the following:
- (a) a commodity contract;
  - (b) a forward contract;
  - (c) a repurchase agreement;
  - (d) a securities contract;
  - (e) a swap agreement; or
  - (f) a similar agreement that the commissioner determines by rule or order to be a qualified financial contract for purposes of this chapter.
- (32) As the context requires, "receiver" means the commissioner or the commissioner's designee, including a rehabilitator, liquidator, or ancillary receiver.
- (33) As the context requires, "receivership" means a rehabilitation, liquidation, or ancillary receivership.
- (34) Unless the context requires otherwise, "receivership court" refers to the court in which a delinquency proceeding is pending.
- (35) "Reciprocal state" means a state other than this state that:
- (a) enforces a law substantially similar to this chapter;
  - (b) requires the commissioner to be the receiver of a delinquent insurer; and
  - (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by the receiver of a delinquent insurer.
- (36) "Record," when used as a noun, means information or data, in whatever form maintained, including:
- (a) a book;
  - (b) a document;
  - (c) a paper;
  - (d) a file;
  - (e) an application file;
  - (f) a policyholder list;
  - (g) policy information;
  - (h) a claim or claim file;
  - (i) an account;
  - (j) a voucher;

- (k) a litigation file;
  - (l) a premium record;
  - (m) a rate book;
  - (n) an underwriting manual;
  - (o) a personnel record;
  - (p) a financial record; or
  - (q) other material.
- (37) "Reinsurance" means a transaction or contract under which an assuming insurer agrees to indemnify a ceding insurer against all, or a part, of a loss that the ceding insurer may sustain under the one or more policies that the ceding insurer issues or will issue.
- (38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (39)
- (a) "Secured claim" means, subject to Subsection (39)(b):
    - (i) a claim secured by an asset that is not a general asset; or
    - (ii) the right to set off as provided in Section 31A-27a-510.
  - (b) "Secured claim" does not include:
    - (i) a special deposit claim;
    - (ii) a claim based on mere possession; or
    - (iii) a claim arising from a constructive or resulting trust.
- (40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (41) "Special deposit" means a deposit established pursuant to statute for the security or benefit of a limited class or classes of persons.
- (42)
- (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured by a special deposit.
  - (b) "Special deposit claim" does not include a claim against the general assets of the insurer.
- (43) "State" means a state, district, or territory of the United States.
- (44) "Subsidiary" is as defined in Section 31A-1-301.
- (45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).
- (46)
- (a) "Transfer" includes the sale and every other and different mode of disposing of or parting with property or with an interest in property, whether:
    - (i) directly or indirectly;
    - (ii) absolutely or conditionally;
    - (iii) voluntarily or involuntarily; or
    - (iv) by or without judicial proceedings.
  - (b) An interest in property includes:
    - (i) a set off;
    - (ii) having possession of the property; or
    - (iii) fixing a lien on the property or on an interest in the property.
  - (c) The retention of a security title in property delivered to an insurer and foreclosure of the insurer's equity of redemption is considered a transfer suffered by the insurer.
- (47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer transacting the business of insurance in this state that has not received a certificate of authority from this state,

or some other type of authority that allows for the transaction of the business of insurance in this state.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session