

SECTION 22. IC 27-9-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Sec. 2. As used in IC 27-9:

(a) “Ancillary state” means any state other than a domiciliary state.

(b) “Collateral”, for purposes of IC 27-9-3-34.5, means cash, a letter of credit, a surety bond, or another form of security posted by an insured, a captive insurer, or reinsurer, to secure the insured’s obligation to:

(1) pay deductible claims or to reimburse the insurer for deductible claim payments under a large deductible policy; or

(2) reimburse or pay the insurer as required for other secured obligations.

(c) “Commercially reasonable” means:

(1) acting in good faith according to prevailing industry practices; and

(2) making all reasonable efforts considering the facts and circumstances of a matter.

~~(b)~~ **(d)** “Commissioner” refers to the insurance commissioner.

~~(c)~~ **(e)** “Creditor” means a person having a claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

(f) “Deductible claim” means a claim under a large deductible policy that does not exceed the deductible. The term includes a claim for loss, defense, and (unless excluded) cost containment expense.

~~(d)~~ **(g)** “Delinquency proceeding” means:

(1) any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer; and

(2) any summary proceeding under IC 27-9-2-1 or IC 27-9-2-2.

~~(e)~~ **(h)** “Doing business” includes the following acts, whether effected by mail or otherwise:

(1) The issuance or delivery of contracts of insurance to persons resident in Indiana.

(2) The solicitation of applications for contracts or other negotiations preliminary to the execution of contracts.

(3) The collection of premiums, membership fees, assessments, or other consideration for contracts.

(4) The transaction of matters subsequent to execution of contracts and arising out of them.

(5) Operating under a license or certificate of authority, as an insurer, issued by the insurance department.

~~(f)~~ **(i)** “Domiciliary state” means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

~~(g)~~ **(j)** “Fair consideration” is given for property or obligation:

(1) when in exchange for that property or obligation, as a fair equivalent for it, and in good faith, property is conveyed or services are provided or an obligation is incurred or an antecedent debt is satisfied; or

(2) when that property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

~~(h)~~ **(k)** “Foreign guaranty association” refers to a guaranty association similar to those listed in subsection ~~(k)~~ **(n)** established in any state.

~~(i)~~ **(l)** “Formal delinquency hearing” means any liquidation or rehabilitation proceeding.

~~(j)~~ **(m)** “General assets” means all property not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, “general assets” includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by that property. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

~~(k)~~ **(n)** “Guaranty association” includes an association established under:

(1) IC 27-6-8, the insurance guaranty association law; or

(2) IC 27-8-8, the life and health guaranty association law.

~~(l)~~ **(o)** “Insolvency” or “insolvent” means:

(1) for an insurer issuing only assessable fire insurance policies:

(A) the inability of the insurer to pay any obligation within thirty (30) days after it becomes payable; or

(B) if an assessment be made within thirty (30) days after the date an obligation becomes payable, the inability of the insurer to pay that obligation thirty (30) days following the date specified in the first assessment notice issued after the date of loss; and

(2) for all other insurers when:

(A) the insurer is unable to pay its obligations when they are due; or

(B) the insurer’s admitted assets do not exceed its liabilities, plus the greater of:

(i) any capital and surplus required by law for its organization; or

(ii) the total par or stated value of its authorized and issued capital stock.

For purposes of this subsection, “liabilities” include reserves required by law or by regulation.

~~(m)~~ **(p)** “Insurer” means any person who:

(1) has done, purports to do, is doing, or is licensed to do insurance business; and

(2) is subject to the authority of any insurance commissioner as to liquidation, rehabilitation, reorganization, supervision, or conservation.

For purposes of IC 27-9, other persons included under section 1 of this chapter shall be considered to be insurers.

(q) “Large deductible policy” means a combination of worker’s compensation policies or endorsements, or both, issued to an insured and contracts or security agreements entered into between the insured and insurer in which the insured has agreed to pay directly, or reimburse the insurer for the insurer’s payment of, the:

(1) initial part of a claim under the policy; or

(2) expenses related to a claim;

up to a specified dollar amount. The term includes a policy that contains, in addition to a per claim limit, an aggregate limit on the insured's liability for all deductible claims. The term also includes a policy with a deductible of at least fifty thousand dollars (\$50,000). The term does not include a policy, an endorsement, or an agreement under which the initial part of a claim is self-insured and the insurer is not obligated to pay any part of the self-insured retention. The term also does not include a policy that provides for retrospectively rated premium payments or a reinsurance agreement, except to the extent that a reinsurance agreement assumes, secures, or pays the insured's large deductible obligations.

(r) "Other secured obligations", for purposes of IC 27-9-3-34.5, means obligations of an insured to an insurer other than obligations under a large deductible policy. The term includes obligations under a reinsurance agreement or another agreement that involves retrospective premium obligations the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

(s) "Preferred claim" means any claim with respect to which the terms of IC 27-9 accord priority of payment from the general assets of the insurer.

(t) "Receiver" includes liquidator, rehabilitator, or conservator.

(u) "Reciprocal state" means any state other than Indiana in which:

(1) in substance and effect IC 27-9-3-7(a), IC 27-9-4-3, IC 27-9-4-4, and IC 27-9-4-6 through IC 27-9-4-8 are in force;

(2) provisions are in force requiring that the commissioner (or equivalent official) be the receiver of a delinquent insurer; and

(3) some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(v) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(w) "Special deposit claim" means any claim secured by a deposit made under law for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(x) "State" includes the District of Columbia and all other territories of the United States.

(y) "Transfer" includes all methods of disposing with any interest in property or with the possession of that property, or of fixing a lien upon property, or upon an interest in property, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be considered a transfer made by the debtor.