

2023 Kansas Statutes

40-3607. Definitions. For the purposes of this act:

- (a) "Ancillary state" means any state other than a domiciliary state.
- (b) "Commissioner" means the commissioner of insurance.
- (c) "Creditor" means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.
- (d) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under K.S.A. 40-3613 or 40-3614, and amendments thereto.
- (e) "Doing business" includes, but is not necessarily limited to, any of the following acts, whether effected by mail or otherwise:
 - (1) The issuance or delivery of contracts of insurance to persons resident in this state;
 - (2) the solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;
 - (3) the quoting of premiums, membership fees, assessments or other consideration for such contracts;
 - (4) the transaction of matters subsequent to execution of such contracts and arising out of them; or
 - (5) operating under a license or certificate of authority, as an insurer, issued by the insurance department.
- (f) "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) "Fair consideration" is given for property or obligation:
 - (1) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
 - (2) when such 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) "Foreign country" means any other jurisdiction not in any state.
- (i) "General assets" means all property, real, personal or otherwise, 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 hereby. 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.
- (j) "Guaranty association" means the Kansas insurance guaranty association created by K.S.A. 40-2901, and amendments thereto, the Kansas life and health insurance guaranty association created by K.S.A. 40-3001, and amendments thereto, and any other similar entity now or hereafter created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state.
- (k) "Insolvency" or "insolvent" means:
 - (1) For an insurer issuing only assessable fire insurance policies:
 - (A) The inability to pay any obligation within 30 days after it becomes payable; or
 - (B) if an assessment is made, within 30 days after such date. The inability to pay such obligation 30 days following the date specified in the first assessment notice issued after the date of loss.
 - (2) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:
 - (A) Any capital and surplus required by law for its organization; or
 - (B) the total par of stated value of its authorized and issued capital stock.
 - (3) For purposes of this subsection, "liabilities" shall include, but not be limited to, reserves required by statute or by insurance department general regulations or

specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

(l) "Insurer" means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision or conservation by, any insurance commissioner. For purposes of this act, any other persons included under K.S.A. 40-3606, and amendments thereto, shall be deemed to be insurers.

(m) "Person" means any individual, aggregation of individuals, trust, association, partnership, corporation or any affiliate thereof.

(n) "Preferred claim" means any claim with respect to which the terms of this act accord priority of payment from the general assets of the insurer.

(o) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context requires.

(p) "Reciprocal state" means any state other than this state in which in substance and effect subsection (a) of K.S.A. 40-3622 and K.S.A. 40-3650, 40-3651 and 40-3653 through 40-3655, and amendments thereto, are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(q) "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.

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

(s) "State" means any state, district, or territory of the United States and the Panama Canal Zone.

(t) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or within an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

(u) "Commodity contract" means any of the following:

(1) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a:

(A) Board of trade or contract market under the commodity exchange act, 7 U.S.C. § 1 et seq.; or

(B) board of trade outside the United States.

(2) An agreement that is subject to regulation under section 23 of the commodity exchange act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a margin account, margin contract, leverage account or leverage contract.

(3) An agreement or transaction that is subject to regulation under section 6c(b) of the commodity exchange act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a commodity option.

(4) Any combination of the agreements or transactions referred to in this paragraph.

(5) Any option to enter into an agreement or transaction referred to in this paragraph.

(v) "Formal delinquency proceeding" means a delinquency proceeding, except that such term shall not include a supervision under K.S.A. 40-3613, and amendments thereto.

(w) "Forward contract" shall have the meaning ascribed to such term in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D).

(x) "Netting agreement" means:

(1) A contract or agreement, including the terms and conditions incorporated by reference therein, including a master agreement, (which master agreement, together with all schedules, confirmations, definitions and addenda thereto and transactions under any thereof, shall be treated as one netting agreement) that documents one or more transactions between the parties to the agreement:

- (A) For or involving one or more qualified financial contracts; and
- (B) that provides for the netting, liquidation, setoff, termination, acceleration or close out under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements thereunder (including liquidation or close out values relating to such obligations or entitlements) among the parties to the netting agreement;
- (2) any master agreement or bridge agreement for one or more master agreements described in paragraph (1) of this subsection; or
- (3) any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in either paragraph (1) or (2) of this subsection.

Provided that any contract or agreement described in either paragraph (1) or (2) of this subsection relating to agreements or transactions that are not qualified financial contracts shall be deemed to be a netting agreement only with respect to those agreements or transactions that are qualified financial contracts.

(y) "Qualified financial contract" means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement and any similar agreement that the commissioner determines by regulation, rule or order to be a qualified financial contract for the purposes of this act.

(z) "Repurchase agreement" shall have the meaning ascribed to such term in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D). The term repurchase agreement also applies to a reverse repurchase agreement.

(aa) "Securities contract" shall have the meaning set forth in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D).

(bb) "Swap agreement" shall have the meaning set forth in the federal deposit insurance act, 12 U.S.C. § 1821(e)(8)(D).

History: L. 1991, ch. 125, § 3; L. 2013, ch. 46, § 2; April 18.