60B.03 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 60B.01 to 60B.61, the following terms have the meanings given in this section.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota and, in that commissioner's absence or disability, a deputy or other person duly designated to act in that commissioner's place. In the context of rehabilitation or liquidation of a health maintenance organization, "commissioner" means the commissioner of health of the state of Minnesota and, in that commissioner's absence or disability, a deputy or other person duly designated to act in that commissioner's place.

Subd. 3. **Receiver.** "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires.

Subd. 4. **Insurer.** "Insurer" means any person who is doing, has done, purports to do or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, or conservation by, a commissioner. For purposes of sections 60B.01 to 60B.61, all other persons included under section 60B.02 shall be deemed to be insurers.

Subd. 5. **Delinquency proceeding.** "Delinquency proceeding" means any proceeding commenced under sections 60B.01 to 60B.61 against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under sections 60B.11 to 60B.14.

Subd. 6. **State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession of the United States.

Subd. 7. **Foreign country.** "Foreign country" means territory not in any state.

Subd. 8. **Domiciliary state.** "Domiciliary state" or "state of domicile" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United States.

Subd. 9. **Ancillary state.** "Ancillary state" means any state other than a domiciliary state.

Subd. 10. **Reciprocal state.** "Reciprocal state" means any state other than this state in which in substance and effect sections 60B.21, subdivision 1; 60B.54, subdivisions 1 and 3; 60B.55; and 60B.57 to 60B.60; are in force, and in which provisions are in force requiring that the commissioner be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

Subd. 11. **General assets.** "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or held in a separate account in connection with contracts on a variable basis, or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. 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.

Subd. 12. **Preferred claim.** "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer.

Subd. 13. **Special deposit claim.** "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one or more limited classes of persons, but not including any claim secured by general assets.

Subd. 14. **Secured claim.** "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, and any claims against a separate account in connection with a contract on a variable basis, 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, except where they have been invalidated.

Subd. 15. **Insolvency or insolvent.** "Insolvency" or "insolvent" means:

(a) For an insurer organized under sections 67A.01 to 67A.26, the inability to pay any uncontested debt as it becomes due.

(b) For purposes of a liquidation under section 64B.43, subdivision 4, a fraternal authorized control level event under circumstances the commissioner determines will not be promptly remedied pursuant to the plan submitted under section 64B.43, subdivision 3, a society's inability to pay its debts or meet its obligations as they mature, or that a society's assets do not exceed its liabilities plus the greater of any surplus required by law to be constantly maintained.

(c) For any other insurer, that it is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of (1) any capital and surplus required by law to be constantly maintained, or (2) its authorized and issued capital stock. For purposes of this subdivision, "assets" includes one-half of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were 100 percent collection of an assessment at the rate of ten mills per dollar of insurance written by it and in force.

Subd. 16. **Fair consideration.** "Fair consideration" is given for property or an obligation:

(a) 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 obligation is incurred or an antecedent debt is satisfied; or

(b) 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.

Subd. 17. **Creditor.** "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

Subd. 18. **Transfer.** "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, 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.

Subd. 19. **Alien insurer.** "Alien insurer" means an insurer incorporated or organized in a foreign country.

Subd. 20. **Affiliate or affiliated.** An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Subd. 21. **Netting agreement.** "Netting agreement" means:

(1) a contract or agreement, including terms and conditions incorporated by reference in it, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda to it and transactions under any of them, shall be treated as one netting agreement, that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and 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 under it, including liquidation or close-out values relating to those 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 clause (1); or

(3) any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in clause (1) or (2); provided that any contract or agreement described in clause (1) or (2) 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.

Subd. 22. **Qualified financial contract.** (a) "Qualified financial contract" means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines to be a qualified financial contract for the purposes of this chapter.

(b) "Commodity contract" means:

(1) a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade or contract market under the Commodity Exchange Act, United States Code, title 7, section 1, et seq., or a board of trade outside the United States;

(2) an agreement that is subject to regulation under Section 19 of the Commodity Exchange Act, United States Code, title 7, section 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 4c(b) of the Commodity Exchange Act, United States Code, title 7, section 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; or

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

(c) "Forward contract," "repurchase agreement," "securities contract," and "swap agreement" shall have the meanings set forth in the Federal Deposit Insurance Act, United States Code, chapter 12, section 1821(e)(8)(D), as amended from time to time.

History: *1969 c 708 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1990 c 538 s 1; 1992 c 564 art 1 s 24; 1995 c 234 art 1 s 2; 1997 c 225 art 2 s 62; 2001 c 7 s 13; 2009 c 37 art 3 s 12; 2010 c 275 art 1 s 2,3; 2018 c 175 s 1*