

304.36-050 Definitions for subtitle.

As used in this subtitle, unless the context otherwise requires:

- (1) "Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer;
- (2) "Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060;
- (3) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, except that no person who is an affiliate of the insolvent insurer may be a claimant;
- (4) (a) "Control" means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.
(b) Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of any other person. This presumption may be rebutted by a showing that control does not exist in fact;
- (5) (a) "Covered claim":
 1. Means an unpaid claim, including a claim for unearned premiums, submitted by a claimant, which arises out, is within the coverage, and is subject to the applicable limits of an insurance policy to which this subtitle applies issued by a member insurer, if the member insurer becomes an insolvent insurer after June 16, 1972, and:
 - a. The claimant or insured is a resident of this state at the time of the insured event, except that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or
 - b. The claim is a first-party claim for damage to property with a permanent location in this state; and
 2. Includes the obligations assumed by an assuming insurer from a ceding insurer when the assuming insurer subsequently becomes an insolvent insurer if:
 - a. At the time of the assuming insurer's insolvency, the ceding insurer is no longer admitted to transact business in this state; and
 - b. Both the assuming insurer and the ceding insurer were member insurers at the time the assumption was made.
- (b) For purposes of paragraph (a) of this subsection, "issued by a member insurer" shall not include an insurance policy issued by a nonmember insurer

and later allocated to, transferred to, assumed by, or otherwise made the sole responsibility of a member insurer under a state statute commonly known as a "Division" or an "Insurance Business Transfer" statute.

- (c) "Covered claim" shall not include the following:
 - 1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;
 - 2. Any amount sought as a return of premium under any retrospective rating plan or dividends plan;
 - 3. Legal expenses for policyholders who were not Kentucky residents on the date of the insured event;
 - 4. Legal expenses for policyholders who were Kentucky residents on the date of the insured event if the legal expenses exceed the association's statutory cap;
 - 5. Any first-party claim by an insured whose net worth exceeds ten million dollars (\$10,000,000) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer. An insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;
 - 6. Any first-party claim by an insured that is an affiliate of an insolvent insurer;
 - 7. Any amount awarded as punitive or exemplary damages;
 - 8. An obligation incurred after the expiration date of the insurance policy;
 - 9. An obligation incurred after the insurance policy has been replaced by the insured, canceled at the insured's request, or canceled by the receiver or liquidator;
 - 10. An obligation to a state, other than Kentucky, or federal government; or
 - 11. Any claim for interest;
- (6) "Insolvent insurer" means an insurer:
 - (a) That was a member insurer at the time the policy was issued; and
 - (b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the insurer's state of domicile;
- (7) "Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim;
- (8) (a) "Member insurer" means any person who:
 - 1. Writes any kind of insurance to which this subtitle applies under KRS 304.36-030(2), including the exchange of reciprocal or inter-insurance contracts; and
 - 2. Is licensed to transact insurance in this state.
- (b) "Member insurer" shall not include a self-insurer.
- (c) As used in paragraph (b) of this subsection, "self-insurer":
 - 1. Means a person that covers its liability through a qualified individual or

group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance; and

2. Includes but is not limited to:
 - a. Liability self-insurance groups under Subtitle 48 of KRS Chapter 304;
 - b. Workers' compensation self-insured groups under Subtitle 50 of KRS Chapter 304; and
 - c. Self-insurers and self-insured groups under KRS Chapter 342.
- (d) For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this subtitle applies, except that the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license; and
- (9) (a) "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees, and policy fees levied and collected, in this state, less returns thereon and dividends paid or credited to policyholders on such direct business.
- (b) "Net direct written premiums" shall not include premiums on contracts between insurers or reinsurers.

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History: Amended 2023 Ky. Acts ch. 19, sec. 2, effective June 29, 2023. -- Amended 2010 Ky. Acts ch. 24, sec. 1464, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 99, sec. 4, effective July 15, 1998. -- Amended 1982 Ky. Acts ch. 209, sec. 3, effective July 15, 1982. -- Created 1972 Ky. Acts ch. 137, sec. 5, effective June 16, 1972.