

## **IC 27-9**

### **ARTICLE 9. SUPERVISION; REHABILITATION; LIQUIDATION**

#### **IC 27-9-1**

##### **Chapter 1. General Provisions**

#### **IC 27-9-1-1**

##### **Applicability of article**

Sec. 1. Proceedings under this article apply to the following:

- (1) All insurers who are doing, or who have done, insurance business in Indiana, and against whom claims arising from that business may exist.
- (2) All insurers who purport to do insurance business in Indiana.
- (3) All insurers who have insureds resident in Indiana.
- (4) All other persons organized or in the process of organizing with the intent to do an insurance business in Indiana.
- (5) All nonprofit service plans, fraternal benefit societies, and beneficial societies.
- (6) All title insurance companies.
- (7) All health maintenance organizations under IC 27-13.
- (8) All multiple employer welfare arrangements under IC 27-1-34.
- (9) All limited service health maintenance organizations under IC 27-13-34.
- (10) All mutual insurance holding companies under IC 27-14.

*As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.274-1987, SEC.16; P.L.192-1991, SEC.4; P.L.1-1992, SEC.155; P.L.26-1994, SEC.22; P.L.5-2000, SEC.1.*

#### **IC 27-9-1-2**

##### **Definitions**

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.
- (d) "Commissioner" refers to the insurance commissioner.
- (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.
- (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.
- (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.
- (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.
- (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.
- (k) "Foreign guaranty association" refers to a guaranty association similar to those listed in subsection (n) established in any state.
- (l) "Formal delinquency hearing" means any liquidation or rehabilitation proceeding.
- (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.

(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.

(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.

(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.

*As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.72-2016, SEC.22.*

### **IC 27-9-1-3**

#### **Jurisdiction of court and commissioner; actions by receivers; place of action**

Sec. 3. (a) A delinquency proceeding under this chapter may only

be commenced by the commissioner. A court may not entertain, hear, or determine a proceeding commenced by any other person.

(b) A court may not entertain, hear, or determine any complaint requesting:

- (1) the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer; or
- (2) an injunction, restraining order, or other relief preliminary to, incidental to, or relating to those proceedings other than in accordance with this article.

(c) In addition to other grounds for jurisdiction provided by the law, an Indiana court having jurisdiction of the subject matter has jurisdiction over a person served under the Indiana rules of court or other applicable law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in Indiana if the person served is:

- (1) obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the insurance producer or broker, in any action on or incident to the obligation;
- (2) a reinsurer who:
  - (A) has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced; or
  - (B) is an insurance producer or broker of, or for, the reinsurer in any action on or incident to the reinsurance contract; or
- (3) or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

(d) If it appears to a receiver appointed in a proceeding under this article that there has been criminal or tortious conduct, breach of any contractual or fiduciary obligation, or other unlawful conduct detrimental to the insurer by any director, officer, manager, insurance producer, broker, employee, or other person or entity, the receiver may pursue all appropriate legal remedies on behalf of the insurer.

(e) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside Indiana, the court may enter an order to stay further proceedings on the action in Indiana.

(f) All action authorized by this section must be brought in the Marion County circuit court.

*As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.167-1986, SEC.1; P.L.178-2003, SEC.73.*

### **IC 27-9-1-3.5**

#### **Change of judge or venue from Marion County Circuit Court in**

### **actions against receiver**

Sec. 3.5. Notwithstanding the Indiana rules of trial procedure or other law to the contrary, an automatic change of judge or change of venue from the Marion County circuit court may not be granted in any action brought by or against a receiver appointed in a proceeding under this article. A change of judge or change of venue from the Marion County circuit court in such an action shall be granted only upon the filing of a verified application alleging and demonstrating one (1) or more of the specific grounds for a change of judge set forth in the Indiana rules of trial procedure or for a change of venue set forth in IC 34-35-1-1.

*As added by P.L.167-1986, SEC.2. Amended by P.L.1-1998, SEC.153.*

### **IC 27-9-1-4**

#### **Restraining orders and injunctions**

Sec. 4. (a) A receiver appointed in a proceeding under IC 27-9 may at any time apply for, and any court with general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders as considered necessary and proper to prevent any of the following:

- (1) The transaction of further business.
- (2) The transfer of property.
- (3) Interference with the receiver or with a proceeding under IC 27-9.
- (4) Waste of the insurer's assets.
- (5) Dissipation and transfer of bank accounts.
- (6) The institution or further prosecution of any actions or proceedings.
- (7) The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets or its policyholders.
- (8) The levying of execution against the insurer, its assets, or its policyholders.
- (9) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer.
- (10) The withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer.
- (11) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under IC 27-9.

(b) The receiver may apply to any court outside of Indiana for the relief described in subsection (a).

*As added by Acts 1979, P.L.255, SEC.1.*

### **IC 27-9-1-5**

#### **Cooperation of insurer with commissioner**

Sec. 5. (a) An officer, manager, director, trustee, owner, employee, or insurance producer of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under IC 27-9 or any investigation preliminary to the proceeding. The term "person", as used in this section, includes any person who exercises control, directly or indirectly, over activities of an insurer through any holding company or other affiliate of the insurer. "To cooperate" includes:

- (1) replying promptly in writing to any inquiry from the commissioner requesting such a reply; and
- (2) making available to the commissioner all books, accounts, documents, or other records, information, or property of or pertaining to the insurer and in the insurer's possession, custody, or control.

(b) A person may not obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary to or incidental to an investigation.

(c) This section does not abridge existing legal rights, including the right to resist a petition for liquidation, other delinquency proceedings, or other orders.

(d) A person who:

- (1) is included within subsection (a) and who fails to cooperate with the commissioner;
- (2) obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental to a delinquency proceeding; or
- (3) violates any order of the commissioner under IC 27-9;

commits a Class A infraction.

*As added by Acts 1979, P.L.255, SEC.1. Amended by P.L.178-2003, SEC.74.*

### **IC 27-9-1-6**

#### **Bonds of commissioner and deputies**

Sec. 6. In any proceeding under IC 27-9, the commissioner and his deputies are responsible on their official bonds for the faithful performance of their duties. If the court considers it desirable for the protection of the insurer's assets, the court may at any time require an additional bond from the commissioner or his deputies. Those bonds shall be paid for out of the assets of the insurer as a cost of administration.

*As added by Acts 1979, P.L.255, SEC.1.*