§ 107. Definitions of terms of general use in this chapter. (a) In this chapter, unless the context otherwise requires:

(1) "Accident and health insurance company", means any corporation having power to do the kinds of insurance business specified in item (i) of paragraph three of subsection (a) of section one thousand one hundred thirteen of this chapter or items (i) and (ii) of such paragraph, provided such company does not have power to do any other kind or kinds of insurance business.

(2) "Accredited reinsurer" means an assuming insurer not authorized to do an insurance business in this state but which (i) presents satisfactory evidence to the superintendent that it meets the applicable standards of solvency required in this state, (ii) is in compliance with the conditions prescribed by regulation under which a ceding insurer may be allowed credit for reinsurance recoverable from an insurer not authorized in this state, and (iii) has received a certificate of recognition as an accredited reinsurer issued by the superintendent pursuant to such regulation; provided that no insurer shall be an accredited reinsurer with respect to any kind of insurance not provided for in such certificate.

(3) "Admitted assets" means assets of an insurer which conform to the requirements of section one thousand three hundred one of this chapter.

(4) "Affiliate" means a corporation a majority of whose shares is owned or controlled by shareholders, directors or officers of another corporation, who own or control a majority of the shares of the other corporation.

(5) "Alien insurer" means any insurer incorporated or organized under the laws of any foreign nation, or of any province or territory not included under the definition of foreign insurer.

(6) "American institution" means an institution created or existing under the laws of the United States of America or of any state, district or territory thereof.

(7) "Articles of association", when used in reference to an unincorporated association, means the basic instrument prescribing the powers, purposes and organization of the association.

(8) "Assuming insurer" means an insurer which, under a contract of reinsurance, incurs to another insurer, called the ceding insurer, an obligation the performance of which is contingent upon the ceding

insurer's incurring liability or loss under its contract or contracts of insurance, guaranty or suretyship made with third persons.

(9) "At last year-end" means the end of the next preceding calendar year.

(10) "Authorized insurer" means an insurer authorized as such to do an insurance business in this state in compliance with this chapter, by reason of a license so to do issued and in force pursuant to the laws of this state or of a corporate charter granted and in force pursuant to the laws of this state, but not including any insurer herein exempted from compliance with the requirement that it obtain a license to do business.

(11) "Board of directors" means the body having power and responsibility for management and control of a corporation and the advisory committee or similar body having such power in reference to a reciprocal insurer or Lloyds underwriters.

(12) "Capital", when used in reference to a stock insurance company, means the aggregate par value of all classes of shares of capital stock issued and outstanding.

(13) "Ceding insurer" means the insurer to which an assuming insurer is obligated.

(14) "Charter" means the basic instrument, by whatever name called, prescribing the powers, purposes and organization of a corporation.

(15) "Company" means a corporation.

(16) "Control". Except for the purposes of article fifteen of this chapter, "control", including the terms "controlling", "controlled by" and "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an institution, whether through the ownership of voting securities, by contract or otherwise.

(17) "Department" means the department of financial services of this state.

(18) "Deputy" means a deputy superintendent of financial services of this state.

(19) "Domestic insurer" means any authorized insurer incorporated or organized under any law of this state.

(20) "Firm" means a partnership, limited or unlimited, general or special.

(21) "Foreign insurer" means any insurer incorporated or organized under the laws of any state, as herein defined, other than this state.

(22) "Fraternal benefit society" has the meaning ascribed to it by subsection (a) of section four thousand five hundred one of this chapter.

(23) "Independent insurance agent" has the meaning ascribed to it by section two thousand one hundred one of this chapter.

(24) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or any similar entity.

(25) "Insurance agent" has the meaning ascribed to it by section two thousand one hundred one of this chapter.

(26) "Insurance broker" has the meaning ascribed to it by section two thousand one hundred one of this chapter.

(27) "Insurance contract" has the meaning ascribed to it by section one thousand one hundred one of this chapter.

(28) "Life insurance company" means any corporation having power to do either one or both of the kinds of insurance business specified in paragraphs one and two of subsection (a) of section one thousand one hundred thirteen of this chapter.

(29) "Lloyds underwriters" means any aggregation of individuals, who under a common name engage in the business of insurance for profit through an attorney-in-fact having authority to obligate the underwriters severally, within such limits as may be lawfully specified in the power of attorney, on contracts of insurance made or issued by such attorney-in-fact, in the name of such aggregation of individuals, to and with any person or persons insured.

(30) "Minimum surplus" means the minimum amount by which the admitted assets of an insurer without capital stock must exceed its liabilities in order to be permitted to do business in this state.

(31) "Minor" or "infant" means a person who has not attained the age of eighteen years.

(32) "Mortgage" includes a deed of trust.

(33) "Obligations" includes bonds, debentures, notes and other evidences of indebtedness (whether or not liability for payment extends beyond the security therefor) as well as participation interests in any of the foregoing.

(34) "Officer" means any person charged with active management and control, in an executive capacity, of the affairs of a corporation, including the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, general counsel, actuary, comptroller and any other person appointed or elected by the board of directors to exercise similar powers, and including the manager, attorney-in-fact, or other person appointed or elected by the board of directors to exercise similar powers, of a United States branch of an alien insurer, and the attorney-in-fact of a reciprocal insurer or Lloyds underwriters, and in case such manager or attorney-in-fact is a corporation, including the officers of such corporation.

(35) "Parent corporation" has the meaning assigned to it in the definition of subsidiary.

(36) "Property/casualty insurance company" means any company having power to write any one or more of the basic kinds of insurance specified in subsection (a) of section four thousand one hundred one of this chapter.

(37) "Reciprocal insurer" means any aggregation of persons, firms or corporations or, in the alternative, New York counties, towns, cities, villages, district corporations (as defined in paragraph three of section 2.00 of the local finance law), or school districts and boards of cooperative educational services, called "subscribers" in article sixty-one of this chapter, who or which under a common name engage in the business of inter-insurance or exchanging contracts of insurance on the reciprocal plan through an attorney-in-fact having authority to obligate the subscribers severally, within such limits as may lawfully be specified in the subscriber's agreement, on contracts of insurance made with any subscriber as a policyholder through such attorney-in-fact acting on behalf of all other subscribers. Such term includes any reciprocal or inter-insurance exchange, by whatever name known, and any reference thereto as an insurer shall be deemed to mean any such aggregation of inter-insurers operating through an attorney-in-fact individually and collectively as an insurance organization for the benefit of its policyholders.

(38) "Renewal license" means a license which becomes effective immediately following the expiration of a license previously issued and in force, and which differs from such previous license only as to the

date of expiration.

(39) "State" means any state of the United States, the commonwealth of Puerto Rico and the District of Columbia.

(40) "Subsidiary" means an institution controlled, directly or indirectly, by another institution or by a retirement system. "Parent corporation" means an institution or a retirement system that, directly or indirectly, controls another institution. For the purposes of the definitions in this subsection:

(A) an institution is conclusively presumed to be controlled by an institution or retirement system that, directly or indirectly, with power to vote, owns, controls or holds a majority of the outstanding voting securities of such institution;

(B) no presumption, either of control or of absence of control, arises if such ownership, control or holding of voting securities is less than a majority but more than five percent;

(C) absence of control is presumed if such ownership, control or holding of voting securities is five percent or less; and

(D) in determining control, voting securities held in separate accounts of an institution or retirement system shall be deemed to be owned by the institution or retirement system, but voting securities in an investment advisory account that are not owned by an institution but are held in an account as to which the institution is an investment adviser shall not be deemed to be controlled or held by such institution.

(41) "Superintendent" means the superintendent of financial services of this state.

(42) "Surplus to policyholders" means the excess of total admitted assets over the liabilities of an insurer, which is the sum of all capital and surplus accounts minus any impairment thereof.

(43) "United States". Except for the purposes of article fourteen of this chapter, when used to signify place, means only the states of the United States, the commonwealth of Puerto Rico and the District of Columbia.

(44) "United States branch" means, as the context may require, the business unit through which business is transacted within the United States by an alien insurer, or the assets and liabilities of such insurer within the United States pertaining to such business or the

management powers pertaining to such business and to such assets and liabilities or any combination of these three.

(45) "Voting securities" means securities of any class or any ownership interest having voting power for the election of directors, trustees or management of an institution, other than securities having such power only by reason of the happening of a contingency.

(46) "Doing an insurance business" has the meaning ascribed to it by section one thousand one hundred one of this chapter.

(47) "Commercial risk insurance" means insurance not subject to section three thousand four hundred twenty-five of this chapter issued or issued for delivery in this state, on a risk located in this state, insuring any of the following contingencies:

(A) loss of or damage to real property;

(B) loss of or damage to personal property;

(C) losses or liabilities arising out of the ownership, operation or use of a motor vehicle;

(D) liabilities of persons acting as officers or directors; or

(E) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(48) "Product liability" means liability of the insured for damages for personal injury, death or property damage, where liability is based upon negligence, implied warranty or strict liability, arising out of a design, inspection, testing or manufacturing defect, or any other defect in a product, or is based upon any failure to warn, or to properly instruct in the use of a product or for any liability for any damage arising out of the handling or use of any product manufactured, sold, handled or distributed by the insured or work completed by or on behalf of the insured.

(49) "Professional liability insurance" means insurance covering liability arising out of the practice of any profession for which a license is required by a governmental authority of this state or, with respect to treatment of patients, arising out of the operation of a duly certified hospital.

(50) "Public entity insurance" means commercial risk insurance issued to a public entity.

(51) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college, community college or university;

(D) a fire district, fire company, volunteer fire department, or any other entity that contracts with a municipality or other political subdivision to provide fire protection;

(E) a public library, as defined in section two hundred fifty-three of the education law, authorized to operate in this state;

(F) a public corporation, including a municipal corporation, district corporation or public benefit corporation;

(G) an improvement district, special district or other district authorized by the village law, town law, county law or any other law;

(H) a public corporation, public authority, commission, agency, municipal or other public housing authority, or project organized pursuant to article two of the private housing finance law; or

(I) any other governmental instrumentality or unit in the state of New York.

(52) "Gap amount" means:

(A) in the case of a lease of personal property, the difference, if any, between:

(i) the amount owed by the lessee, under the early termination provision of the lease, as of the date of a total loss of the leased property caused by its theft or physical damage, or the amount which would have been owed by the lessee had the lessor not waived such obligations; and

(ii) the sum of: (I) any unpaid rental payments and other unpaid charges, arising from the failure of the lessee to fulfill the lessee's obligations under the lease, that had accrued prior to the date of the loss; and (II) the actual cash value of the personal property as of the date of the loss. If the lessee is required under the lease agreement to maintain a physical damage insurance policy on the personal property which is the subject of the lease agreement, and that policy is in effect on the date of the loss, then "actual cash value" shall have the same meaning as under the physical damage insurance policy.

(B) In the case of a loan or other credit transaction on the purchase of personal property, the difference, if any, between:

(i) the amount owed by the debtor under the loan or other credit transaction as of the date of a total loss of the personal property which is the subject of the loan or other credit transaction agreement caused by its theft or physical damage, or the amount that would have been owed by the debtor had the creditor not waived such obligation; and

(ii) the sum of: (I) any unpaid payments and other unpaid charges, arising from the failure of the debtor to fulfill the obligations under the loan or other credit transaction agreement, that had accrued prior to the date of the loss; and (II) the actual cash value of the personal property as of the date of the loss. If the debtor is required under the loan or other credit transaction agreement to maintain a physical damage insurance policy on the personal property which is the subject of the loan or other credit transaction agreement, and that policy is in effect on the date of the loss, then "actual cash value" shall have the same meaning as under the physical damage insurance policy.

(53) "Nonprofit property/casualty insurance company" means an insurer organized pursuant to section six thousand seven hundred three of this chapter and that is subject to the provisions of article sixty-seven of this chapter.

(54) "Title insurance agent" shall be deemed to have the same meaning as paragraph one of subsection (y) of section two thousand one hundred one of this chapter.

(55) "Medically fragile child" means an individual who is under twenty-one years of age and has a chronic debilitating condition or conditions, who may or may not be hospitalized or institutionalized, and meets one or more of the following criteria: (1) is technologically dependent for life or health sustaining functions; (2) requires a complex medication regimen or medical interventions to maintain or to improve their health status; or (3) is in need of ongoing assessment or intervention to prevent serious deterioration of their health status or medical complications that place their life, health or development at risk. Chronic debilitating conditions include bronchopulmonary dysplasia, cerebral palsy, congenital heart disease, microcephaly, pulmonary hypertension, and muscular dystrophy. The term "medically fragile child" shall also include traumatic brain injury, the nature of

which typically require care in a specialty care center for medically fragile children, even though the child does not have a chronic debilitating condition or also meet one of the three conditions of this subsection. Notwithstanding the definitions set forth in this subsection, any patient which has received prior approval from an insurer for admission to a specialty care facility for medically fragile children shall be considered a medically fragile child at least until discharge from that facility occurs.

(b) Whenever the terms "include", "including" or terms of similar import appear in this chapter, unless the context requires otherwise, such terms shall not be construed to imply the exclusion of any person, class or thing not specifically included.

(c) A reference in this chapter to any other law or statute of this state, or of any other jurisdiction, means such law or statute as amended to the effective date of this chapter and, unless the context otherwise requires, as amended thereafter.