§ 1101. Definitions; doing an insurance business. (a) In this article:
(1) "Insurance contract" means any agreement or other transaction whereby one party, the "insurer", is obligated to confer benefit of pecuniary value upon another party, the "insured" or "beneficiary", dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event.

(2) "Fortuitous event" means any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party.

(3) "Contract of warranty, guaranty or suretyship" means an insurance contract only if made by a warrantor, guarantor or surety who or which, as such, is doing an insurance business.

(b) (1) Except as otherwise provided in this subsection, any of the following acts in this state, effected by mail from outside this state or otherwise, by any person, firm, association, corporation or joint-stock company shall constitute doing an insurance business in this state and shall constitute doing business in the state within the meaning of section three hundred two of the civil practice law and rules:

(A) making, or proposing to make, as insurer, any insurance contract, including either issuance or delivery of a policy or contract of insurance to a resident of this state or to any firm, association, or corporation authorized to do business herein, or solicitation of applications for any such policies or contracts;

(B) making, or proposing to make, as warrantor, guarantor or surety, any contract of warranty, guaranty or suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the warrantor, guarantor or surety;

(C) collecting any premium, membership fee, assessment or other consideration for any policy or contract of insurance;

(D) doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this chapter; or

(E) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of

this chapter.

(2) Notwithstanding the foregoing, the following acts or transactions, if effected by mail from outside this state by an unauthorized foreign or alien insurer duly licensed to transact the business of insurance in and by the laws of its domicile, shall not constitute doing an insurance business in this state, but section one thousand two hundred thirteen of this chapter shall nevertheless be applicable to such insurers:

(A) transactions by any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding any charitable, religious, educational or scientific institution organized and operated, without profit to any private shareholder or individual, by issuing insurance or annuity contracts directly from its home office, without agents or representatives in this state, only to or for the benefit of such institutions and to individuals engaged in their service;

(B) transactions with respect to group life, group annuity, group accident and health or blanket accident and health insurance (other than any transaction with respect to a group annuity contract funding individual retirement accounts or individual retirement annuities, as defined in section four hundred eight of the Internal Revenue Code, funding annuities in accordance with subdivision (b) of section four hundred three of such code or providing a plan of retirement annuities under which the payments are derived wholly from funds contributed by the persons covered):

(i) where such groups conform to the definitions of eligibility contained in;

(I) the following paragraphs of subsection (b) of section four thousand two hundred sixteen of this chapter:

(aa) paragraph (1) or (2);

(bb) paragraph (3), if, with respect to those credit transactions entered into in this state, the policy fully conforms with the requirements of sections three thousand two hundred one, three thousand two hundred twenty and four thousand two hundred sixteen of this chapter;

(cc) paragraphs (4), (5), (6), (7), (8), (9) and (10).

(II) the following subparagraphs of paragraph (1) of subsection (c) of section four thousand two hundred thirty-five of this chapter:

(aa) subparagraph (A), (B), (C) or (D);

(bb) subparagraph (E), if, with respect to those credit transactions entered into in this state, the policy fully conforms with the requirements of sections three thousand two hundred one, three thousand two hundred twenty-one and four thousand two hundred thirty-five of this chapter;

(cc) subparagraphs (F), (G) and (H).

(III) section four thousand two hundred thirty-seven (except subparagraph (F) of paragraph three of subsection (a) thereof) or four thousand two hundred thirty-eight (except paragraphs six and seven of subsection (b) thereof) of this chapter; and

(ii) where the master policies or contracts were lawfully issued without this state in a jurisdiction where the insurer was authorized to do an insurance business;

(C) transactions involving the continuance or servicing of life or accident and health insurance policies or annuity contracts lawfully issued or delivered in this state by an authorized insurer and occurring subsequent to the termination of such insurer's authority to do an insurance business in this state. Notwithstanding the foregoing, the superintendent's approval granted pursuant to section one thousand one hundred five of this article may authorize transactions involving the continuance or servicing of life insurance policies or annuity contracts to be effected from outside this state by telephone, video call, facsimile, web portal, electronic transfer of funds, or by any other electronic means approved by the superintendent, provided that the insurer shall not have any other contact or interaction with a person in this state other than as specified and in the manner provided in this paragraph;

(D) transactions with respect to policies or annuity contracts lawfully issued without this state occurring subsequent to issue, if, at the time of issue, such policies or contracts covered subjects of insurance or risks not resident or located in this state. Notwithstanding the foregoing, transactions described in this subparagraph involving the continuance or servicing of life insurance policies or annuity contracts may be effected from outside this state by telephone, video call, facsimile, web portal, electronic transfer of funds, or by any other electronic means approved by the superintendent,

provided that the insurer shall not have any other contact or interaction with a person in this state other than as specified and in the manner provided in this paragraph;

(E) transactions with respect to policies of insurance on risks located or resident within or without this state (except master policies or contracts of group insurance which are subject to the requirements of subparagraph (B) hereof), which policies are principally negotiated, issued and delivered without this state in a jurisdiction in which the insurer is authorized to do an insurance business;

(F) transactions authorized by section two thousand one hundred five of this chapter with respect to excess lines insurance;

(G) transactions with respect to the reinsurance of risks of authorized insurers to the extent that such reinsurance is permitted by this chapter;

(H) transactions with respect to insurance contracts negotiated or placed pursuant or otherwise subject to subsection (b), (c), (j) or (k) of section two thousand one hundred seventeen of this chapter;

(I) transactions with respect to any policy of insurance or annuity contract issued prior to September first, nineteen hundred seventy.

(3) Notwithstanding the foregoing, the making of an agreement pursuant to which a lessor of personal property, a creditor making a loan or other credit transaction on personal property or, in the absence of a waiver by the lessor or creditor, the lessor's or creditor's assignee waives the obligation of the lessee or debtor for the gap amount, as such term is defined in paragraph fifty-two of subsection (a) of section one hundred seven of this chapter, shall not constitute, or be deemed to constitute, the doing of an insurance business if:

(i) the lessor or creditor or, in the absence of a waiver by the lessor or creditor, the assignee waives any and all obligations of the lessee or debtor for the gap amount and the lessee or debtor is discharged from any and all further obligation to pay the gap amount;

(ii) the waiver applies only in the event of a total loss of the personal property occasioned by its theft or physical damage;

(iii) in the event the lessor, creditor or assignee purchases lessor or creditor gap insurance, the charge to the lessee or debtor for the waiver does not exceed the cost of the lessor or creditor gap insurance coverage; provided, however, that nothing contained herein shall be

construed to prohibit the lessor from including the charge for the waiver in the capitalized cost as that term is defined in subdivision eleven of section three hundred thirty-one of the personal property law.

(3-a) Notwithstanding the foregoing, the marketing, sale, offer for sale, issuance, making, proposing to make or administration of a service contract pursuant to article seventy-nine of this chapter or warranty, service contract or maintenance agreement conditioned upon or otherwise associated with the sale or supply of heating fuel shall not constitute doing an insurance business in this state.

(4) In the application of this chapter, the fact that no profit is derived from the making of insurance contracts, agreements or transactions, or that no separate or direct consideration is received therefor, shall not be deemed conclusively to show that the making thereof does not constitute the doing of an insurance business.

(5) Notwithstanding the foregoing, an unauthorized insurer, which (A) is affiliated with an insurer licensed in this state, and (B) has satisfied all applicable requirements for placements by excess line brokers as set forth in section two thousand one hundred eighteen of this chapter, may provide from an office within the state, services to support its insurance business. Such services shall not be deemed under this chapter as doing an insurance business in this state. For the purposes of this section these services include, but are not limited to, computer operations, clerical and staffing support, underwriting, negotiating contract terms, quoting premiums, binding coverage, drafting and issuing policies and claims handling, investigation and payment, among other incidental services. Such services shall not include the marketing, soliciting or advertising by the unauthorized insurer directly to policyholders. Notwithstanding paragraph two of subsection (a) of section two thousand one hundred twenty-two of this chapter, such unauthorized insurers shall be permitted to advertise to, and market and solicit through, excess line brokers licensed pursuant to section two thousand one hundred five of this chapter. All obligations of such a licensee under article twenty-one of this chapter shall remain in full force and effect. Any document issued by the unauthorized insurer that indicates any location within this state in which it conducts its operations shall include a prominent notice that the insurer is not licensed by the state of New York, in no smaller than 10 point type, in

accordance with regulations as may be promulgated by the superintendent.

(6) Notwithstanding the foregoing, the election by the president of the civil service commission to provide health benefits directly to New York state health benefit plan participants shall not constitute the doing of insurance business within the meaning of article eleven of the insurance law.

(7)(A) Notwithstanding the foregoing, the making of a swap shall not constitute doing an insurance business in this state.

(B) For the purposes of this paragraph, "swap" shall have the meaning set forth in 7 U.S.C. § 1a.

(8) Notwithstanding the foregoing, the maintenance of a website outside the state by an unauthorized foreign or alien insurer duly licensed to transact the business of insurance in and by the laws of its domicile, by which a member of a group may self-enroll, through an automated process, in a group life, group annuity, or group accident and health insurance policy or contract, as defined in paragraphs one, two, and three of subsection (a) of section one thousand one hundred thirteen of this article, shall not constitute doing an insurance business in this state, but section one thousand two hundred thirteen of this chapter nevertheless shall apply to the insurer; provided that:

(A) the group conforms to the definition of eligibility contained in:

(i) paragraph one, two, four (with respect to a policy issued to a trustee or trustees of a fund established or participated in by two or more employers, one or more labor unions, or by one or more employers or labor unions, provided that all such employers or labor unions are in the same industry), or five of subsection (b) of section four thousand two hundred sixteen of this chapter;

(ii) subparagraph (A), (B), (C), or (D) (with respect to a policy issued to a trustee or trustees of a fund established or participated in by two or more employers, one or more labor unions, or by one or more employers or labor unions, provided that all such employers or labor unions are in the same industry) of paragraph one of subsection (c) of section four thousand two hundred thirty-five of this chapter; or

(iii) paragraphs one, two, three or four of subsection (b) of section four thousand two hundred thirty-eight of this chapter, but not including a group annuity contract: (I) funding individual retirement accounts or individual retirement annuities, as defined in section four

hundred eight of the Internal Revenue Code; (II) funding annuities in accordance with subdivision (b) of section four hundred three of such code; or (III) providing a plan of retirement annuities under which the payments are derived wholly from funds contributed by the persons covered.

(B) the insurer lawfully issued the master policy or contract without this state in a jurisdiction where the insurer was authorized to do an insurance business;

(C) the insurer's website clearly states that the insurer is not authorized to transact the business of insurance in this state; and

(D) the insurer does not have any other contact or interaction with the member other than as specified and in the manner provided in paragraph two of this subsection.