

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

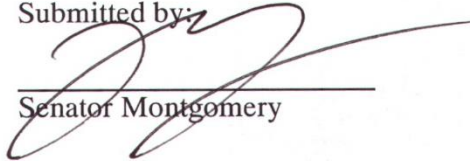
No. 1

COMMITTEE AMENDMENT

(Date)

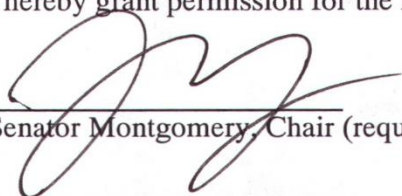
I move to amend Senate Bill No. 1069 by substituting the attached floor substitute (Request No. 2046) for the title, enacting clause, and entire body of the measure.

Submitted by:



Senator Montgomery

I hereby grant permission for the floor substitute to be adopted.

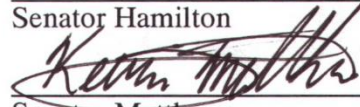


Senator Montgomery, Chair (required)

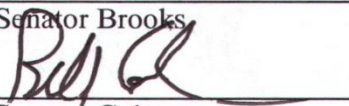


Senator Garvin


Senator Jett

Senator Hamilton


Senator Matthews

Senator Brooks


Senator Coleman

Senator Prieto


Senator Woods



Senator Dugger

Senator Treat, President Pro Tempore

Senator McCortney, Majority Floor Leader

Note: Retirement and Insurance committee majority requires six (6) members' signatures.

Montgomery-RD-FS-SB1069
3/21/2023 1:47 PM

(Floor Amendments Only) Date and Time Filed: 3-21-23 4:33 pm *mfj*

Untimely Amendment Cycle Extended Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1069

6 By: Montgomery of the Senate

7 and

8 Sneed of the House

9 FLOOR SUBSTITUTE

10 An Act relating to insurance; amending 36 O.S. 2021,
11 Section 1901, as amended by Section 2, Chapter 119,
12 O.S.L. 2022 (36 O.S. Supp. 2022, Section 1901), which
13 relates to rehabilitation and liquidation; updating
14 statutory language; adding and modifying definitions;
15 allowing certain persons and entities to exercise
16 certain contractual rights; establishing provisions
17 relating to agreement and contract terminations;
18 establishing requirements for insurance receivers;
19 exempting certain persons or entities from
20 provisions; providing for applicability of certain
21 provisions; providing for codification; and providing
22 an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY 36 O.S. 2021, Section 1901, as
amended by Section 2, Chapter 119, O.S.L. 2022 (36 O.S. Supp. 2022,
Section 1901), is amended to read as follows:

Section 1901. For the purpose of Article 19 of the Oklahoma
Insurance Code:

1 1. "Impairment" or ~~"insolvency."~~ The "insolvency" means the
2 capital of a stock insurer, or limited stock life, accident and
3 health insurer, the net assets of a Lloyds association, or the
4 surplus of a mutual or reciprocal insurer, shall be deemed to be
5 impaired and the insurer shall be deemed to be insolvent, when such
6 insurer shall not be possessed of assets at least equal to all
7 liabilities and required reserves together with its total issued and
8 outstanding capital stock if a stock insurer, the net assets if a
9 Lloyds association, or the minimum surplus if a mutual or reciprocal
10 insurer required by this ~~code~~ Code to be maintained for the kind or
11 kinds of insurance it is then authorized to transact;

12 2. "Insurer" means any person, firm, corporation, health
13 maintenance organizations, association or aggregation of persons
14 doing an insurance business and subject to the insurance supervisory
15 authority of, or to liquidation, rehabilitation, reorganization or
16 conservation by the Insurance Commissioner or the equivalent
17 insurance supervisory official of another state;

18 3. "Delinquency proceeding" means any proceeding commenced
19 against an insurer pursuant to this article for the purpose of
20 liquidating, rehabilitating, reorganizing or conserving such
21 insurer;

22 4. "State" means any state of the United States and also the
23 District of Columbia, ~~Alaska, Hawaii,~~ and Puerto Rico;

24 5. "Foreign country" means territory not in any state;

1 6. "Domiciliary state" means the state in which an insurer is
2 incorporated or organized, or in the case of an insurer incorporated
3 or organized in a foreign country, the state in which such insurer,
4 having become authorized to do business in such state, has at the
5 commencement of delinquency proceedings, the largest amount of its
6 assets held in trust and assets held on deposit for the benefit of
7 its policyholders or policyholders and creditors in the United
8 States, and any such insurer is deemed to be domiciled in such
9 state;

10 7. "Ancillary state" means any state other than a domiciliary
11 state;

12 8. "Reciprocal state" means any state other than this state
13 that has enacted a law that sets forth a scheme for the
14 administration of an insurer in receivership by the state's
15 ~~Insurance Commissioner~~ insurance commissioner or comparable
16 insurance regulatory official;

17 9. "General assets" means all property, real, personal or
18 otherwise, not specifically mortgaged, pledged, deposited or
19 otherwise encumbered for the security or benefit of specified
20 persons or a limited class or classes of persons, and as to such
21 specifically encumbered property the term includes all such property
22 or its proceeds in excess of the amount necessary to discharge the
23 sum or sums secured thereby. Assets held in trust and assets held
24 on deposit for the security or benefit of all policyholders or all

1 policyholders and creditors in the United States shall be deemed
2 general assets;

3 10. "Preferred claim" means any claim with respect to which the
4 law of the state or of the United States accords priority of
5 payments from the general assets of the insurer;

6 11. "Special deposit claim" means any claim secured by a
7 deposit made pursuant to statute for the security or benefit of a
8 limited class or classes of persons, but not including any general
9 assets;

10 12. "Secured claim" means any claim secured by mortgage, trust
11 deed, pledge, deposit as security, escrow, or otherwise, but not
12 including special deposit claim or claims against general assets.
13 The term also includes claims which more than four (4) months prior
14 to the commencement of delinquency proceedings in the state of the
15 insurer's domicile have become liens upon specific assets by reason
16 of judicial process; ~~and~~

17 13. "Receiver" means receiver, liquidator, rehabilitator, or
18 conservator as the context may require; and

19 14. "Qualified financial contract" means a commodity contract,
20 forward contract, repurchase agreement, securities contract, swap
21 agreement, and any similar agreement the Commissioner determines by
22 rule, regulation, resolution, or order to be a qualified financial
23 contract.

24

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1926.1 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. As used in this section:

5 1. "Actual direct compensatory damages" means normal and
6 reasonable costs of cover or other reasonable measures of damages
7 utilized in the derivatives, securities, or other market for the
8 contract and agreement claims. Provided, actual direct compensatory
9 damages shall not include punitive or exemplary damages, damages for
10 lost profit or lost opportunity, or damages for pain and suffering;

11 2. "Business day" means a day other than a Saturday, Sunday, or
12 any day on which either the New York Stock Exchange or the Federal
13 Reserve Bank of New York is closed;

14 3. "Contractual right" means any right set forth in a rule or
15 bylaw of a derivatives clearing organization, a multilateral
16 clearing organization, a national securities exchange, a national
17 securities association, a securities clearing agency, a contract
18 market designated under the federal Commodity Exchange Act, a
19 derivatives transaction execution facility registered under the
20 federal Commodity Exchange Act, or a board of trade or in a
21 resolution of the governing board thereof and any right, whether or
22 not evidenced in writing, arising under statutory or common law, or
23 under law merchant, or by reason of normal business practice; and

24

1 4. "Walkaway clause" means a provision in a netting agreement
2 or a qualified financial contract which, after calculation of a
3 value of a party's position or an amount due to or from one of the
4 parties in accordance with its terms upon termination, liquidation,
5 or acceleration of the netting agreement or qualified financial
6 contract, either does not create a payment obligation of a party or
7 extinguishes a payment obligation of a party in whole or in part
8 solely because of the party's status as a non-defaulting party.

9 B. Notwithstanding any other provision of the Oklahoma
10 Insurance Code, including any other provision permitting the
11 modification of contracts, no person or entity shall be stayed or
12 prohibited from exercising:

13 1. A contractual right to cause termination, liquidation,
14 acceleration, or closeout of obligations under or in connection with
15 any netting agreement or qualified financial contract with an
16 insurer because of:

17 a. the insolvency, financial condition, or default of the
18 insurer at any time, provided the right is enforceable
19 under applicable law other than the provisions of this
20 act, or

21 b. the commencement of a formal delinquency proceeding
22 under the provisions of this section;

23 2. Any right under a pledge, security, collateral,
24 reimbursement, guarantee agreement or arrangement, any other similar

1 security agreement or arrangement, or other credit enhancement
2 relating to one or more netting agreements or qualified financial
3 contracts;

4 3. Subject to any provision of Section 1928 of Title 36 of the
5 Oklahoma Statutes, any right to set off or net out any termination
6 value, payment amount, or other transfer obligation arising under or
7 in connection with one or more qualified financial contracts where
8 the counterparty or its guarantor is organized under the laws of the
9 United States or a state or a foreign jurisdiction approved by the
10 Securities Valuation Office (SVO) of the National Association of
11 Insurance Commissioners (NAIC) as eligible for netting; or

12 4. If a counterparty to a master netting agreement or a
13 qualified financial contract with an insurer subject to a proceeding
14 under this section terminates, liquidates, closes out, or
15 accelerates the agreement or contract, damages shall be measured as
16 of the date or dates of termination, liquidation, closeout, or
17 acceleration. The amount of a claim for damages shall be actual
18 direct compensatory damages calculated in accordance with subsection
19 G of this section.

20 C. 1. Upon termination of a netting agreement or qualified
21 financial contract, the net or settlement amount, if any, owed by a
22 non-defaulting party to an insurer against which an application or
23 petition has been filed under this section shall be transferred to
24 or on the order of the receiver for the insurer, even if the insurer

1 is the defaulting party, notwithstanding any walkaway clause in the
2 netting agreement or qualified financial contract.

3 2. Any limited two-way payment or first method provision in a
4 netting agreement or qualified financial contract with an insurer
5 which has defaulted shall be deemed to be a full two-way payment or
6 second method provision as against the defaulting insurer. Any such
7 property or amount shall, except to the extent it is subject to one
8 or more secondary liens or encumbrances or rights of netting or
9 setoff, be a general asset of the insurer.

10 D. In making any transfer of a netting agreement or qualified
11 financial contract of an insurer subject to a proceeding under this
12 section, the receiver shall either:

13 1. Transfer to one party, other than an insurer subject to a
14 proceeding under this section, all netting agreements and qualified
15 financial contracts between a counterparty or any affiliate of the
16 counterparty and the insurer which is the subject of the proceeding,
17 including:

18 a. all rights and obligations of each party under each
19 netting agreement and qualified financial contract,
20 and

21 b. all property, including any guarantees or other credit
22 enhancement, securing any claims of each party under
23 each netting agreement and qualified financial
24 contract; or

1 2. Transfer none of the netting agreements, qualified financial
2 contracts, rights, obligations, or property referred to in paragraph
3 1 of this subsection, with respect to the counterparty and any
4 affiliate of the counterparty.

5 E. If a receiver for an insurer makes a transfer of one or more
6 netting agreements or qualified financial contracts, then the
7 receiver shall use its best efforts to notify any person who is
8 party to the netting agreements or qualified financial contracts of
9 the transfer by twelve o'clock p.m. on the business day following
10 the transfer.

11 F. Notwithstanding any other provision of the Oklahoma
12 Insurance Code, a receiver shall not avoid a transfer of money or
13 other property arising under or in connection with a netting
14 agreement, qualified financial contract, or any pledge, security,
15 collateral or guarantee agreement, or any other similar security
16 arrangement or credit support document relating to a netting
17 agreement or qualified financial contract which is made before the
18 commencement of a formal delinquency proceeding under this Code.
19 Provided, however, a transfer may be avoided under Section 1926 of
20 Title 36 of the Oklahoma Statutes if the transfer was made with
21 actual intent to hinder, delay, or defraud the insurer, a receiver
22 appointed for the insurer, or existing or future creditors.

23 G. 1. In exercising the rights of disaffirmance or repudiation
24 of a receiver with respect to any netting agreement or qualified

1 financial contract to which an insurer is a party, the receiver for
2 the insurer shall either:

3 a. disaffirm or repudiate all netting agreements and
4 qualified financial contracts between a counterparty
5 or any affiliate of the counterparty and the insurer
6 which is the subject of the proceeding, or

7 b. disaffirm or repudiate none of the netting agreements
8 and qualified financial contracts referred to in
9 subparagraph a of this paragraph with respect to the
10 person or any affiliate of the person or entity.

11 2. Notwithstanding any other provision of this Code, any claim
12 of a counterparty against the estate arising from the receiver's
13 disaffirmance or repudiation of a netting agreement or qualified
14 financial contract which has not been previously affirmed in the
15 liquidation or immediately preceding a conservation or
16 rehabilitation case shall be determined and shall be allowed or
17 disallowed as if the claim had arisen before the date of the filing
18 of the petition for liquidation or, if a conservation or
19 rehabilitation proceeding is converted to a liquidation proceeding,
20 as if the claim had arisen before the date of the filing of the
21 petition for conservation or rehabilitation. The amount of the
22 claim shall be the actual direct compensatory damages determined as
23 of the date of the disaffirmance or repudiation of the netting
24 agreement or qualified financial contract.

1 H. The provisions of this section shall not apply to persons or
2 entities who are affiliates of the insurer which is the subject of
3 the proceeding.

4 I. All rights of counterparties under this Code shall apply to
5 netting agreements and qualified financial contracts entered into on
6 behalf of the general account or separate accounts if the assets of
7 each separate account are available only to counterparties to
8 netting agreements and qualified financial contracts entered into on
9 behalf of the separate account.

10 SECTION 3. This act shall become effective November 1, 2023.

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12 59-1-2046 RD 3/23/2023 12:16:36 AM

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