

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 1069

By: Montgomery of the Senate

and

6 Sneed of the House

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10 COMMITTEE SUBSTITUTE

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

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

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:

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

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

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

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

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

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

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

13       7. "Ancillary state" means any state other than a domiciliary  
14 state;

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

20       9. "General assets" means all property, real, personal or  
21 otherwise, not specifically mortgaged, pledged, deposited or  
22 otherwise encumbered for the security or benefit of specified  
23 persons or a limited class or classes of persons, and as to such  
24 specifically encumbered property the term includes all such property

1 or its proceeds in excess of the amount necessary to discharge the  
2 sum or sums secured thereby. Assets held in trust and assets held  
3 on deposit for the security or benefit of all policyholders or all  
4 policyholders and creditors in the United States shall be deemed  
5 general assets;

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

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

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

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

22 14. "Qualified financial contract" means a commodity contract,  
23 forward contract, repurchase agreement, securities contract, swap  
24 agreement, and any similar agreement the Commissioner determines by

1 rule, regulation, resolution, or order to be a qualified financial  
2 contract.

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

6 A. As used in this section:

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

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

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

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

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

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

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

23 b. the commencement of a formal delinquency proceeding  
24 under the provisions of this section;

1        2. Any right under a pledge, security, collateral,  
2 reimbursement, guarantee agreement or arrangement, any other similar  
3 security agreement or arrangement, or other credit enhancement  
4 relating to one or more netting agreements or qualified financial  
5 contracts;

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

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

22        C. 1. Upon termination of a netting agreement or qualified  
23 financial contract, the net or settlement amount, if any, owed by a  
24 non-defaulting party to an insurer against which an application or

1 petition has been filed under this section shall be transferred to  
2 or on the order of the receiver for the insurer, even if the insurer  
3 is the defaulting party, notwithstanding any walkaway clause in the  
4 netting agreement or qualified financial contract.

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

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

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

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

1           each netting agreement and qualified financial  
2           contract; or

3           2. Transfer none of the netting agreements, qualified financial  
4 contracts, rights, obligations, or property referred to in paragraph  
5 1 of this subsection, with respect to the counterparty and any  
6 affiliate of the counterparty.

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

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

1 G. 1. In exercising the rights of disaffirmance or repudiation  
2 of a receiver with respect to any netting agreement or qualified  
3 financial contract to which an insurer is a party, the receiver for  
4 the insurer shall either:

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

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

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

1 of the date of the disaffirmance or repudiation of the netting  
2 agreement or qualified financial contract.

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

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

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

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