

1                                **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2    STATE OF OKLAHOMA

3                                1st Session of the 59th Legislature (2023)

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

By: Montgomery of the Senate

and

Sneed of the House

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8  
9    COMMITTEE 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.

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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

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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 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/05/2023 - DO  
13 PASS, As Amended.

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