An Act

ENROLLED SENATE
BILL NO. 1069

By: Montgomery of the Senate

and

Sneed and Deck of the House

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

SUBJECT: Insurance

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:

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

1. "Impairment" or ~~"insolvency." The~~ "insolvency" means the capital of a stock insurer, or limited stock life, accident and health insurer, the net assets of a Lloyds association, or the surplus of a mutual or reciprocal insurer, shall be deemed to be impaired and the insurer shall be deemed to be insolvent, when such insurer shall not be possessed of assets at least equal to all

liabilities and required reserves together with its total issued and outstanding capital stock if a stock insurer, the net assets if a Lloyds association, or the minimum surplus if a mutual or reciprocal insurer required by this ~~code~~ Code to be maintained for the kind or kinds of insurance it is then authorized to transact;

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

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

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

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

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

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

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

9. "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets;

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

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

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

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

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

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

A. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

2. Any limited two-way payment or first method provision in a netting agreement or qualified financial contract with an insurer

which has defaulted shall be deemed to be a full two-way payment or second method provision as against the defaulting insurer. Any such property or amount shall, except to the extent it is subject to one or more secondary liens or encumbrances or rights of netting or setoff, be a general asset of the insurer.

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

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

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

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

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

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

F. Notwithstanding any other provision of the Oklahoma Insurance Code, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement, qualified financial contract, or any pledge, security, collateral or guarantee agreement, or any other similar security

arrangement or credit support document relating to a netting agreement or qualified financial contract which is made before the commencement of a formal delinquency proceeding under this Code. Provided, however, a transfer may be avoided under Section 1926 of Title 36 of the Oklahoma Statutes if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

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

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

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

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

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

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

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

Passed the Senate the 25th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 26th

day of May, 20 23, at 10:25 o'clock a. M.

By: Jenna Curry

Approved by the Governor of the State of Oklahoma this 7th

day of June, 20 23, at 4:00 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 7th

day of June, 20 23, at 5:15 o'clock P. M.

By: Brian Bingman