

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 1014

By: Quinn

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2011, Sections 1901 and 1904, as amended by Section 1, Chapter 113, O.S.L. 2013 (36 O.S. Supp. 2018, Section 1904), which relate to definitions and injunctions; adding definitions of netting agreement and qualified financial contract; authorizing persons to end netting agreements or certain contracts with insurers; directing transfer of certain monies; classifying certain payment provision in netting agreement; classifying certain payment as asset of insurer; authorizing avoidance of certain transfer of assets; updating statutory reference; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1901, is amended to read as follows:

Section 1901. For the purpose of ~~Article 19 of the Insurance Code~~ Section 1901 et seq. of this title:

1. "Impairment" or "insolvency." 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

1 shall be deemed to be insolvent, when such insurer shall not be  
2 possessed of assets at least equal to all liabilities and required  
3 reserves together with its total issued and outstanding capital  
4 stock if a stock insurer, the net assets if a Lloyds association, or  
5 the minimum surplus if a mutual or reciprocal insurer required by  
6 this code to be maintained for the kind or kinds of insurance it is  
7 then authorized to transact-i

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

14 3. "Delinquency proceeding" means any proceeding commenced  
15 against an insurer pursuant to this article for the purpose of  
16 liquidating, rehabilitating, reorganizing or conserving such  
17 insurer-i

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

20 5. "Foreign country" means territory not in any state-i

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

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

8 8. "Reciprocal state" means any state other than this state in  
9 which in substance and effect the provisions of the Uniform Insurers  
10 Liquidation Act, as defined in Section 1921 of this title, are in  
11 force, including the provisions requiring that the Insurance  
12 Commissioner or equivalent insurance supervisory official be the  
13 receiver of a delinquent insurer-; i

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

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

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

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

15        13. "Netting agreement" means a contract or agreement that  
16 documents one or more transactions between parties to the agreement  
17 for or involving qualified financial contracts and that provides for  
18 the netting, liquidation, setoff, termination, acceleration or close  
19 out under or in connection with qualified financial contracts;

20        14. "Qualified financial contract" means those contracts set  
21 forth in 12 CFR 360.5; and

22        15. "Receiver" means receiver, liquidator, rehabilitator, or  
23 conservator as the context may require.  
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1       SECTION 2.       AMENDATORY       36 O.S. 2011, Section 1904, as  
2 amended by Section 1, Chapter 113, O.S.L. 2013 (36 O.S. Supp. 2018,  
3 Section 1904), is amended to read as follows:

4       Section 1904. A. Upon application by the Insurance  
5 Commissioner for such an order to show cause, or at any time  
6 thereafter, the court may without notice issue an injunction  
7 restraining the insurer, its officers, directors, stockholders,  
8 members, subscribers, agents and all other persons for the  
9 transaction of its business or the waste or disposition of its  
10 property until the further order of the court. Notwithstanding the  
11 foregoing, or any other provision of this chapter, no Federal Home  
12 Loan Bank shall be stayed, enjoined, or prohibited from exercising  
13 or enforcing any right or cause of action regarding collateral  
14 pledged under any security agreement, or any pledge, security,  
15 collateral or guarantee agreement or any other similar arrangement  
16 or credit enhancement relating to such Federal Home Loan Bank  
17 security agreement.

18       B. The court may at any time during a proceeding under this  
19 article issue such other injunctions or orders as may be deemed  
20 necessary to prevent interference with the Insurance Commissioner or  
21 the proceedings, or waste of the assets of the insurer, or the  
22 commencement or prosecution of any actions, or the obtaining of  
23 preferences, judgments, attachments or other liens, or the making of  
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1 any levy against the insurer or against its assets or any part  
2 thereof.

3 C. Notwithstanding any other provision of law, no bond shall be  
4 required of the Insurance Commissioner as a prerequisite for the  
5 issuance of any injunction or restraining order pursuant to this  
6 section.

7 D. Nothing in this section shall deprive a party in interest of  
8 any contractual right to pursue arbitration of any dispute under any  
9 law, and venue shall be as provided in subsection B of Section 1902  
10 of this title.

11 E. Notwithstanding any other provision of law, a person shall  
12 not be stayed or prohibited from exercising the right to terminate,  
13 liquidate or close out any netting agreement or qualified financial  
14 contract with an insurer. Upon termination of a netting agreement,  
15 the net or settlement amount, if any, owed by the non-defaulting  
16 party to an insurer against which an application for any injunction  
17 or restraining order has been filed under this section shall be  
18 transferred to or on the order of the receiver for the insurer. Any  
19 limited two-way payment provision in a netting agreement with an  
20 insurer that has defaulted shall be deemed to be a full two-way  
21 payment provision as against the defaulting insurer. Any such  
22 amount, except to the extent it is subject to one or more secondary  
23 liens or encumbrances, shall be considered a general asset of the  
24 insurer. However, a transfer may be avoided under Section 1926 of

1 this title if the transfer was made with actual intent to hinder,  
2 delay or defraud the insurer, a receiver appointed for the insurer  
3 or existing or future creditors.

4 SECTION 3. This act shall become effective November 1, 2019.

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