

2019 -- H 5688

LC001919

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO INSURANCE -- INSURER RECEIVERSHIP MODEL ACT

Introduced By: Representatives Cassar, Shekarchi, Williams, Shanley, and Walsh

Date Introduced: February 27, 2019

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 14.6

4 INSURANCE RECEIVERSHIP MODEL ACT

5
6 **27-14.6-1. Short title.**

7 This chapter shall be known and may be cited as the "Insurer Receivership Model Act."

8 **27-14.6-2. Definitions.**

9 For the purposes of this chapter:

10 (1) "Commodity contract" means:

11 (i) A contract for the purchase or sale of a commodity for the future delivery on, or
12 subject to the rules of, a board of trade or contract market under the Commodity Exchange Act (7
13 U.S.C. § 1, et seq.) or a board of trade outside the United States;

14 (ii) An agreement that is subject to regulation under the Commodity Exchange Act
15 (U.S.C. § 9, et seq.) and that is commonly known to the commodities trade as a margin account,
16 margin contract, leverage account or leverage contract;

17 (iii) An agreement or transaction that is subject to regulation under the Commodity
18 Exchange Act (7 U.S.C. § 4(c)(b), et seq.), and that is commonly known to the commodities trade
19 as a commodity option;

1 (iv) Any combination of the agreements or transactions referred to in this subsection; or
2 (v) Any option to enter into an agreement or transaction referred to in this subsection.

3 (2) "Netting Agreement" means:

4 (i) A contract or agreement (including terms and conditions incorporated by reference
5 therein), including a master agreement (which master agreement, together with all schedules,
6 confirmations, definitions and addenda thereto and transactions under any thereof, shall be treated
7 as one netting agreement), that documents one or more transactions between the parties to the
8 agreement for or involving one or more qualified financial contracts and that provides for the
9 netting, liquidation, setoff, termination, acceleration, or close out under or in connection with one
10 or more qualified financial contracts or present or future payment or delivery obligations or
11 payment or delivery entitlements thereunder (including liquidation or close out values relating to
12 such obligations or entitlements) among the parties to the netting agreement;

13 (ii) Any master agreement or bridge agreement for one or more master agreements
14 described in this subsection; or

15 (iii) Any security agreement or arrangement or other credit enhancement or guarantee or
16 reimbursement obligation related to any contract or agreement described in subsections (2) or (3)
17 of this section; provided, that any contract or agreement described in subsections (2) or (3) of this
18 section relating to agreements or transactions that are not qualified financial contracts shall be
19 deemed to be a netting agreement only with respect to those agreements or transactions that are
20 qualified financial contracts.

21 (3) "Qualified financial contract" means any commodity contract, forward contract,
22 repurchase agreement, securities contract, swap agreement and any similar agreement that the
23 commissioner determines by regulation, resolution or order to be a qualified financial contract for
24 the purposes of this chapter.

25 **27-14.6-3. Qualified financial contracts.**

26 (a) Notwithstanding any other provision of this chapter or chapters 14.3 or 14.4 of this
27 title to the contrary, including any other provision of this chapter permitting the modification of
28 contracts, or other law of this state, no person shall be stayed or prohibited from exercising:

29 (1) A contractual right to cause the termination, liquidation, acceleration or close out of
30 obligations under or in connection with any netting agreement or qualified financial contract with
31 an insurer because of:

32 (i) The insolvency, financial condition or default of the insurer at any time; provided, that
33 the right is enforceable under applicable law other than this chapter; or

34 (ii) The commencement of a formal delinquency proceeding under this chapter;

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

4 (3) Subject to any provision of § 27-14.6-4, any right to set off or net out any termination
5 value, payment amount, or other transfer obligation arising under or in connection with one or
6 more qualified financial contracts where the counterparty or its guarantor is organized under the
7 laws of the United States or a state or a foreign jurisdiction approved by the Securities Valuation
8 Office (SVO) of the National Association of Insurance Commissioners (NAIC) as eligible for
9 netting; or

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

15 (b) Upon termination of a netting agreement or qualified financial contract, the net or
16 settlement amount, if any, owed by a non-defaulting party to an insurer against which an
17 application or petition has been filed under this chapter shall be transferred to or on the order of
18 the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any
19 walkaway clause in the netting agreement or qualified financial contract. For purposes of this
20 subsection, the term "walkaway clause" means a provision in a netting agreement or a qualified
21 financial contract that, after calculation of a value of a party's position or an amount due to or
22 from one of the parties in accordance with its terms upon termination, liquidation or acceleration
23 of the netting agreement or qualified financial contract, either does not create a payment
24 obligation of a party or extinguishes a payment obligation of a party in whole or in part solely
25 because of the party's status as a non-defaulting party. Any limited two-way payment or first
26 method provision in a netting agreement or qualified financial contract with an insurer that has
27 defaulted shall be deemed to be a full two-way payment or second method provision as against
28 the defaulting insurer. Any such property or amount shall, except to the extent it is subject to one
29 or more secondary liens or encumbrances or rights of netting or setoff, be a general asset of the
30 insurer.

31 (c) In making any transfer of a netting agreement or qualified financial contract of an
32 insurer subject to a proceeding under this chapter, the receiver shall either:

33 (1) Transfer to one or more parties (other than an insurer subject to a proceeding under
34 this chapter) all netting agreements and qualified financial contracts between a counterparty or

1 any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

2 (i) All rights and obligations of each party under each netting agreement and qualified
3 financial contract; and

4 (ii) All property, including any guarantees or other credit enhancement, securing any
5 claims of each party under each netting agreement and qualified financial contract; or

6 (2) Transfer none of the netting agreements, qualified financial contracts, rights,
7 obligations or property referred to in subsection (a)(i) of this subsection (with respect to the
8 counterparty and any affiliate of the counterparty).

9 (d) If a receiver for an insurer makes a transfer of one or more netting agreements or
10 qualified financial contracts, then the receiver shall use its best efforts to notify any person who is
11 party to the netting agreements or qualified financial contracts of the transfer by twelve o'clock
12 (12:00) p.m. (the receiver's local time) on the business day following the transfer. For purposes of
13 this subsection, "business day" means a day other than a Saturday, Sunday or any day on which
14 either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

15 (e) Notwithstanding any other provision of this chapter, a receiver may not avoid a
16 transfer of money or other property arising under or in connection with a netting agreement or
17 qualified financial contract (or any pledge, security, collateral or guarantee agreement or any
18 other similar security arrangement or credit support document relating to a netting agreement or
19 qualified financial contract) that is made before the commencement of a formal delinquency
20 proceeding under this chapter; provided, however, a transfer may be avoided if under § 27-14.6-5,
21 the transfer was made with actual intent to hinder, delay or defraud the insurer, a receiver
22 appointed for the insurer, or existing or future creditors.

23 (f)(1) In exercising the rights of disaffirmance or repudiation of a receiver with respect to
24 any netting agreement or qualified financial contract to which an insurer is a party, the receiver
25 for the insurer shall either:

26 (i) Disaffirm or repudiate all netting agreements and qualified financial contracts between
27 a counterparty or any affiliate of the counterparty and the insurer that is the subject of the
28 proceeding; or

29 (ii) Disaffirm or repudiate none of the netting agreements and qualified financial
30 contracts referred to in subsection (a) of this section (with respect to the person or any affiliate of
31 the person).

32 (2) Notwithstanding any other provision of this chapter, any claim of a counterparty
33 against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement
34 or qualified financial contract that has not been previously affirmed in the liquidation or

1 immediately preceding conservation or rehabilitation case shall be determined and shall be
2 allowed or disallowed as if the claim had arisen before the date of the filing of the petition for
3 liquidation or, if a conservation or rehabilitation proceeding is converted to a liquidation
4 proceeding, as if the claim had arisen before the date of the filing of the petition for conservation
5 or rehabilitation. The amount of the claim shall be the actual direct compensatory damages
6 determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified
7 financial contract. The term "actual direct compensatory damages" does not include punitive or
8 exemplary damages, damages for lost profit or lost opportunity or damages for pain and suffering,
9 but does include normal and reasonable costs of cover or other reasonable measures of damages
10 utilized in the derivatives, securities or other market for the contract and agreement claims.

11 (g) The term "contractual right" as used in this section includes any right set forth in a
12 rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act),
13 a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation
14 Improvement Act of 1991), a national securities exchange, a national securities association, a
15 securities clearing agency, a contract market designated under the Commodity Exchange Act, a
16 derivatives transaction execution facility registered under the Commodity Exchange Act, or a
17 board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing
18 board thereof and any right, whether or not evidenced in writing, arising under statutory or
19 common law, or under law merchant, or by reason of normal business practice.

20 (h) The provisions of this section shall not apply to persons who are affiliates of the
21 insurer that is the subject of the proceeding.

22 (i) All rights of counterparties under this chapter shall apply to netting agreements and
23 qualified financial contracts entered into on behalf of the general account or separate accounts if
24 the assets of each separate account are available only to counterparties to netting agreements and
25 qualified financial contracts entered into on behalf of that separate account.

26 **27-14.6-4. Setoffs.**

27 (a) For purposes of this chapter only, no setoff shall be allowed after the commencement
28 of a delinquency proceeding under this chapter in favor of any person if:

29 (1) The claim against the insurer is disallowed;

30 (2) The claim against the insurer was purchased by or transferred to the person on or after
31 the filing of the receivership petition or within one hundred twenty (120) days preceding the
32 filing of the receivership petition;

33 (3) The obligation of the insurer is owed to an affiliate or entity other than the person,
34 absent written assignment of the obligation made more than one hundred twenty (120) days

1 before the filing of the petition for receivership;

2 (4) The obligation of the person is owed to an affiliate or entity other than the insurer,
3 absent written assignment of the obligation made more than one hundred twenty (120) days
4 before the filing of the petition for receivership;

5 (5) The obligation of the person is to pay an assessment levied against the members or
6 subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the
7 insurer, or is in any other way in the nature of a capital contribution;

8 (6) The obligations between the person and the insurer arise out of transactions by which
9 either the person or the insurer has assumed risks and obligations from the other party and then
10 has ceded back to that party substantially the same risks and obligations. Notwithstanding the
11 provisions of this subsection, the receiver may permit setoffs if in his or her discretion a setoff is
12 appropriate because of specific circumstances relating to a transaction;

13 (7) The obligation of the person arises out of any avoidance action taken by the receiver;
14 or

15 (8) The obligation of the insured is for the payment of earned premiums or
16 retrospectively rated earned premiums in accordance with § 27-14.3-3.

17 **27-14.6-5. Receiver as lien creditor.**

18 For the purposes of this chapter only, the receiver may avoid any transfer of or lien upon
19 the property of, or obligation incurred by, an insurer that the insurer or a policyholder, creditor,
20 member or stockholder of the insurer may have avoided without regard to any knowledge of the
21 receiver, the commissioner, the insurer or any policyholder, creditor, member or stockholder of
22 the insurer and whether or not such a policyholder, creditor, member or stockholder exists.

23 SECTION 2. This act shall take effect upon passage.

=====
LC001919
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO INSURANCE -- INSURER RECEIVERSHIP MODEL ACT

1 This act would establish a process for insurers who wish to utilize receivership rather
2 than the other processes of liquidation or rehabilitation.

3 This act would take effect upon passage.

=====
LC001919
=====