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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION ACT-  
-INSURANCE RECEIVERSHIP MODEL ACT

Introduced By: Senator Erin Lynch Prata

Date Introduced: April 04, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 27-14.3-3 of the General Laws in Chapter 27-14.3 entitled  
2 "Insurers' Rehabilitation and Liquidation Act" is hereby amended to read as follows:

3 **27-14.3-3. Definitions.**

4 For the purposes of this chapter:

5 (1) "Ancillary state" means any state other than a domiciliary state;

6 (2) "Commissioner" means the director of the department of business regulation;

7 (3) "Commodity contract" means:

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

11 (ii) An agreement that is subject to regulation under Section 9 of the Commodity  
12 Exchange Act (U.S.C. § 1, et seq.) and that is commonly known to the commodities trade as a  
13 margin account, margin contract, leverage account or leverage contract;

14 (iii) An agreement or transaction that is subject to regulation under Section 4c(b) of the  
15 Commodity Exchange Act (U.S.C. § 1, et seq.) and that is commonly known to the commodities  
16 trade as a commodity option;

17 (iv) Any combination of the agreements or transactions referred to in this subsection; or

18 (v) Any option to enter into an agreement or transaction referred to in this subsection;

1           ~~(3)~~(4) "Creditor" is a person having any claim, whether matured or unmatured, liquidated  
2 or unliquidated, secured or unsecured, absolute, fixed, or contingent;

3           ~~(4)~~(5) "Delinquency proceeding" means any proceeding instituted against an insurer for  
4 the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer, and any  
5 summary proceeding under § 27-14.3-10. "Formal delinquency proceeding" means any  
6 liquidation or rehabilitation proceeding;

7           ~~(5)~~(6) "Doing business" includes any of the following acts, whether effected by mail or  
8 otherwise:

9           (i) The issuance or delivery of contracts of insurance to persons resident in this state;

10          (ii) The solicitation of applications for those contracts, or other negotiations preliminary  
11 to the execution of those contracts;

12          (iii) The collection of premiums, membership fees, assessments, or other consideration  
13 for those contracts;

14          (iv) The transaction of matters subsequent to the execution of those contracts and arising  
15 out of them;

16          (v) Operating under a license, approval, or certificate of authority, as an insurer, issued by  
17 the insurance department; or

18          (vi) Those other acts defined in § 27-16-1.2(b);

19           ~~(6)~~(7) "Domiciliary state" means the state in which an insurer is incorporated or  
20 organized; or, in the case of an alien insurer, its state of entry;

21           ~~(7)~~(8) "Fair consideration" is given for property or obligation:

22          (i) When in exchange for the property or obligation, as a fair equivalent for these, and in  
23 good faith, property is conveyed or services are rendered or an obligation is incurred or an  
24 antecedent debt is satisfied; or

25          (ii) When the property or obligation is received in good faith to secure a present advance  
26 or antecedent debt in an amount not disproportionately small as compared to the value of the  
27 property or obligation obtained;

28           ~~(8)~~(9) "Foreign country" means any other jurisdiction not in any state of the United  
29 States;

30           ~~(9)~~(10) "General assets" means all property, real, personal, or otherwise, not specifically  
31 mortgaged, pledged, deposited, or encumbered for the security or benefit of specified persons or  
32 classes of persons. As to specifically encumbered property, "general assets" includes all property  
33 or its proceeds in excess of the amount necessary to discharge the sum or sums secured by those  
34 assets. Assets held in trust and on deposit for the security or benefit of all policyholders or all

1 policyholders and creditors in more than a single state, shall be treated as general assets;

2 ~~(10)~~(11) "Guaranty association" means the Rhode Island ~~insurers' insolvency fund~~  
3 property & casualty insurance guarantee association created by the Rhode Island ~~Insurers'~~  
4 ~~Insolvency Fund~~ Property & Casualty Insurance Guaranty Association Act, chapter 34 of this  
5 title, and the Rhode Island life and health insurance guaranty association, created by the Rhode  
6 Island Life and Health Insurance Guaranty Association Act, chapter ~~34.1~~ 34.3 as previously  
7 established and approved under chapter 34.1 of title 27 [repealed], of this title, and any other  
8 similar entity now or after this created by the legislature of this state for the payment of claims of  
9 insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in  
10 or after this created by the legislature of any other state;

11 ~~(11)~~(12) "Insolvency" or "insolvent" means:

12 (i) For an insurer issuing only assessable fire insurance policies:

13 (A) The inability to pay any obligation within thirty (30) days after it becomes payable;

14 or

15 (B) If an assessment is made within thirty (30) days after that date, the inability to pay the  
16 obligation thirty (30) days following the date specified in the first assessment notice issued after  
17 the date of loss;

18 (ii) For any other insurer, including those referenced in § 27-14.3-2(8), that it is unable to  
19 pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus  
20 the greater of:

21 (A) Any capital and surplus required by law for its organization and continued operation;

22 or

23 (B) The total par or stated value of its authorized and issued capital stock;

24 (iii) For the purposes of this subdivision, "liabilities" includes, but is not limited to,  
25 reserves required by statute or by insurance department general regulations or specific  
26 requirements imposed by the commissioner upon a subject company at the time of admission or  
27 subsequent to admission;

28 ~~(12)~~(13) "Insurer" means any person who has done, purports to do, is doing, or is licensed  
29 or approved to do an insurance business, and is or has been subject to the authority of, or to  
30 liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance  
31 commissioner. For the purposes of this chapter, any other persons included under § 27-14.3-2  
32 shall be deemed to be insurers and for the purposes of this chapter, guaranty associations shall not  
33 be deemed to be doing the business of insurance or the insurer;

34 (14) "Netting agreement" means:

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

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

12           (iii) Any security agreement or arrangement or other credit enhancement or guarantee or  
13 reimbursement obligation related to any contract or agreement described in subsection (14)(ii) or  
14 (14)(iii) of this section; provided, that any contract or agreement described in subsection (14)(ii)  
15 or (14)(iii) of this section relating to agreements or transactions that are not qualified financial  
16 contracts shall be deemed to be a netting agreement only with respect to those agreements or  
17 transactions that are qualified financial contracts;

18           ~~(13)~~(15) "Person" includes any natural person, corporation, association, partnership, trust,  
19 or other legal entity;

20           ~~(14)~~(16) "Preferred claim" means any claim with respect to which the terms of this  
21 chapter accord priority of payment from the general assets of the insurer;

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

26           ~~(15)~~(18) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the  
27 context requires;

28           ~~(16)~~(19) "Reciprocal state" means any state other than this state in which in substance  
29 and effect §§ 27-14.3-22(a), 27-14.3-56, 27-14.3-57 and 27-14.3-59 -- 27-14.3-61 are in force,  
30 and in which provisions are in force requiring that the commissioner or equivalent official is the  
31 receiver of a delinquent insurer, and in which some provision exists for the avoidance of  
32 fraudulent conveyances and preferential transfers;

33           ~~(17)~~(20) "Secured claim" means any claim secured by mortgage, trust deed, pledge,  
34 deposit as security, escrow, or otherwise, but not including special deposit claims or claims

1 against general assets. The term also includes claims, which have become liens upon specific  
2 assets by reason of judicial process;

3 ~~(18)~~(21) "Special deposit claim" means any claim secured by a deposit made pursuant to  
4 statute for the security or benefit of a limited class or classes of persons, but not including any  
5 claim secured by general assets;

6 ~~(19)~~(22) "State" means any state, district, or territory of the United States and the Panama  
7 canal zone; and

8 ~~(20)~~(23) "Transfer" includes the sale and every other and different mode, direct or  
9 indirect, or disposing of or of parting with property or with an interest in property, or with the  
10 possession of property or of fixing a lien upon property or upon an interest in it absolutely or  
11 conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to  
12 property delivered to a debtor shall be deemed a transfer suffered by the debtor.

13 SECTION 2. Chapter 27-14.3 of the General Laws entitled "Insurers' Rehabilitation and  
14 Liquidation Act" is hereby amended by adding thereto the following sections:

15 **27-14.3-25.1. Qualified financial contracts.**

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

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

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

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

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

28 (3) Subject to any provision of § 27-14.3-25.2, any right to set off or net out any  
29 termination value, payment amount, or other transfer obligation arising under or in connection  
30 with one or more qualified financial contracts where the counterparty or its guarantor is organized  
31 under the laws of the United States or a state or a foreign jurisdiction approved by the Securities  
32 Valuation Office (SVO) of the National Association of Insurance Commissioners (NAIC) as  
33 eligible for netting; or

34 (4) If a counterparty to a master netting agreement or a qualified financial contract with

1 an insurer subject to a proceeding under this chapter terminates, liquidates, closes out or  
2 accelerates the agreement or contract, damages shall be measured as of the date or dates of  
3 termination, liquidation, close out or acceleration. The amount of a claim for damages shall be  
4 actual direct compensatory damages calculated in accordance with subsection (f) of this section.

5 (b) Upon termination of a netting agreement or qualified financial contract, the net or  
6 settlement amount, if any, owed by a non-defaulting party to an insurer against which an  
7 application or petition has been filed under this chapter shall be transferred to or on the order of  
8 the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any  
9 walkaway clause in the netting agreement or qualified financial contract. For purposes of this  
10 subsection, the term "walkaway clause" means a provision in a netting agreement or a qualified  
11 financial contract that, after calculation of a value of a party's position or an amount due to or  
12 from one of the parties in accordance with its terms upon termination, liquidation or acceleration  
13 of the netting agreement or qualified financial contract, either does not create a payment  
14 obligation of a party or extinguishes a payment obligation of a party in whole or in part solely  
15 because of the party's status as a non-defaulting party. Any limited two (2)-way payment or first  
16 method provision in a netting agreement or qualified financial contract with an insurer that has  
17 defaulted shall be deemed to be a full two (2)-way payment or second method provision as  
18 against the defaulting insurer. Any such property or amount shall, except to the extent it is subject  
19 to one or more secondary liens or encumbrances or rights of netting or setoff, be a general asset  
20 of the insurer.

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

23 (1) Transfer to one or more parties (other than an insurer subject to a proceeding under  
24 this chapter) all netting agreements and qualified financial contracts between a counterparty or  
25 any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

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

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

30 (2) Transfer none of the netting agreements, qualified financial contracts, rights,  
31 obligations or property referred to in subsection (a)(1) of this section (with respect to the  
32 counterparty and any affiliate of the counterparty).

33 (d) If a receiver for an insurer makes a transfer of one or more netting agreements or  
34 qualified financial contracts, then the receiver shall use its best efforts to notify any person who is

1 party to the netting agreements or qualified financial contracts of the transfer by twelve o'clock  
2 (12:00) p.m. (the receiver's local time) on the business day following the transfer. For purposes of  
3 this subsection, "business day" means a day other than a Saturday, Sunday or any day on which  
4 either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

5 (e) Notwithstanding any other provision of this chapter, a receiver may not avoid a  
6 transfer of money or other property arising under or in connection with a netting agreement or  
7 qualified financial contract (or any pledge, security, collateral or guarantee agreement or any  
8 other similar security arrangement or credit support document relating to a netting agreement or  
9 qualified financial contract) that is made before the commencement of a formal delinquency  
10 proceeding under this chapter; provided, however, a transfer may be avoided if under § 27-14.3-  
11 25.3, the transfer was made with actual intent to hinder, delay or defraud the insurer, a receiver  
12 appointed for the insurer, or existing or future creditors.

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

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

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

22 (2) Notwithstanding any other provision of this chapter, any claim of a counterparty  
23 against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement  
24 or qualified financial contract that has not been previously affirmed in the liquidation or  
25 immediately preceding conservation or rehabilitation case shall be determined and shall be  
26 allowed or disallowed as if the claim had arisen before the date of the filing of the petition for  
27 liquidation or, if a conservation or rehabilitation proceeding is converted to a liquidation  
28 proceeding, as if the claim had arisen before the date of the filing of the petition for conservation  
29 or rehabilitation. The amount of the claim shall be the actual direct compensatory damages  
30 determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified  
31 financial contract. The term "actual direct compensatory damages" does not include punitive or  
32 exemplary damages, damages for lost profit or lost opportunity or damages for pain and suffering,  
33 but does include normal and reasonable costs of cover or other reasonable measures of damages  
34 utilized in the derivatives, securities or other market for the contract and agreement claims.

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

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

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

16 **27-14.3-25.2. Setoffs.**

17 (a) For purposes of this chapter and chapter 14.4 of this title only, no setoff shall be  
18 allowed after the commencement of a delinquency proceeding under this chapter in favor of any  
19 person if:

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

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

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

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

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

33 (6) The obligations between the person and the insurer arise out of transactions by which  
34 either the person or the insurer has assumed risks and obligations from the other party and then



1 has ceded back to that party substantially the same risks and obligations. Notwithstanding the  
2 provisions of this subsection, the receiver may permit setoffs if in his or her discretion a setoff is  
3 appropriate because of specific circumstances relating to a transaction:

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

6 (8) The obligation of the insured is for the payment of earned premiums or  
7 retrospectively rated earned premiums in accordance with § 27-14.3-37(a)(2).

8 **27-14.3-25.3. Receiver as lien creditor.**

9 For the purposes of this chapter and chapter 14.4 of this title only, the receiver may avoid  
10 any transfer of or lien upon the property of, or obligation incurred by, an insurer that the insurer  
11 or a policyholder, creditor, member or stockholder of the insurer may have avoided without  
12 regard to any knowledge of the receiver, the commissioner, the insurer or any policyholder,  
13 creditor, member or stockholder of the insurer and whether or not such a policyholder, creditor,  
14 member or stockholder exists.

15 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION ACT-  
-INSURANCE RECEIVERSHIP MODEL ACT

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1           This act would adopt a portion of the National Association of Insurance Commissioners  
2 (NAIC) model act with respect to receiverships, specifically with regards to how derivative  
3 contracts are treated in cases of insurance receiverships.

4           This act would take effect upon passage.

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