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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION ACT

Introduced By: Representative Joseph J. Solomon

Date Introduced: February 22, 2021

Referred To: House Corporations

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 "Insurers'
2 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~~ the
7 administrator of banking and insurance as set forth in § 42-14-5;

8 (3) "Commodity contract" means:

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

12 (ii) An agreement that is subject to regulation under Section 9 of the Commodity Exchange
13 Act (7 U.S.C. § 1, et seq.) and that is commonly known to the commodities trade as a margin
14 account, margin contract, leverage account or leverage contract;

15 (iii) An agreement or transaction that is subject to regulation under Section 4c(b) of the
16 Commodity Exchange Act (7 U.S.C. § 1, et seq.) and that is commonly known to the commodities
17 trade as a commodity option;

18 (iv) Any combination of the agreements or transactions referred to in this section; or

19 (v) Any option to enter into an agreement or transaction referred to in this section.

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 liquidation
6 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 to
11 the execution of those contracts;

12 (iii) The collection of premiums, membership fees, assessments, or other consideration for
13 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 organized;
20 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 States;

29 ~~(9)~~(10) "General assets" means all property, real, personal, or otherwise, not specifically
30 mortgaged, pledged, deposited, or encumbered for the security or benefit of specified persons or
31 classes of persons. As to specifically encumbered property, "general assets" includes all property
32 or its proceeds in excess of the amount necessary to discharge the sum or sums secured by those
33 assets. Assets held in trust and on deposit for the security or benefit of all policyholders or all
34 policyholders and creditors in more than a single state, shall be treated as general assets;

1 ~~(10)~~(11) "Guaranty association" means the Rhode Island ~~insurers' insolvency fund~~ Property
2 & Casualty Insurance Guaranty Association created by the Rhode Island Insurers' Insolvency Fund
3 Act, chapter 34 of this title, and the Rhode Island life and health insurance guaranty association,
4 created by the Rhode Island Life and Health Insurance Guaranty Association Act, chapter ~~34.1~~ 34.3
5 of this title, as previously established and approved under chapter 34.1 of title 27 [repealed], and
6 any other similar entity now or after this created by the legislature of this state for the payment of
7 claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in
8 existence in or after this created by the legislature of any other state;

9 ~~(11)~~(12) "Insolvency" or "insolvent" means:

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

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

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

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

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

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

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

25 ~~(12)~~(13) "Insurer" means any person who has done, purports to do, is doing, or is licensed
26 or approved to do an insurance business, and is or has been subject to the authority of, or to
27 liquidation, rehabilitation, reorganization, supervision, or conservation by, any insurance
28 commissioner. For the purposes of this chapter, any other persons included under § 27-14.3-2 shall
29 be deemed to be insurers and for the purposes of this chapter, guaranty associations shall not be
30 deemed to be doing the business of insurance or the insurer;

31 (14) "Netting agreement" means:

32 (i) A contract or agreement (including terms and conditions incorporated by reference
33 therein), including a master agreement (which master agreement, together with all schedules,
34 confirmations, definitions and addenda thereto and transactions under any thereof, shall be treated

1 as one netting agreement), that documents one or more transactions between the parties to the
2 agreement for or involving one or more qualified financial contracts and that provides for the
3 netting, liquidation, setoff, termination, acceleration, or close out under or in connection with one
4 or more qualified financial contracts or present or future payment or delivery obligations or
5 payment or delivery entitlements thereunder (including liquidation or close out values relating to
6 such obligations or entitlements) among the parties to the netting agreement;

7 (ii) Any master agreement or bridge agreement for one or more master agreements
8 described in this section; or

9 (iii) Any security agreement or arrangement or other credit enhancement or guarantee or
10 reimbursement obligation related to any contract or agreement described in § 27-14.3-3(14)(i) and
11 (ii); provided, that any contract or agreement described in § 27-14.3-3(14)(i) and (ii) relating to
12 agreements or transactions that are not qualified financial contracts shall be deemed to be a netting
13 agreement only with respect to those agreements or transactions that are qualified financial
14 contracts.

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

17 ~~(14)~~(16) "Preferred claim" means any claim with respect to which the terms of this chapter
18 accord priority of payment from the general assets of the insurer;

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

23 ~~(15)~~(18) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context
24 requires;

25 ~~(16)~~(19) "Reciprocal state" means any state other than this state in which in substance and
26 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, and in
27 which provisions are in force requiring that the commissioner or equivalent official is the receiver
28 of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent
29 conveyances and preferential transfers;

30 ~~(17)~~(20) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit
31 as security, escrow, or otherwise, but not including special deposit claims or claims against general
32 assets. The term also includes claims, which have become liens upon specific assets by reason of
33 judicial process;

34 ~~(18)~~(21) "Special deposit claim" means any claim secured by a deposit made pursuant to

1 statute for the security or benefit of a limited class or classes of persons, but not including any claim
2 secured by general assets;

3 ~~(19)~~(22) "State" means any state, district, or territory of the United States and the Panama
4 canal zone; and

5 ~~(20)~~(23) "Transfer" includes the sale and every other and different mode, direct or indirect,
6 or disposing of or of parting with property or with an interest in property, or with the possession of
7 property or of fixing a lien upon property or upon an interest in it absolutely or conditionally,
8 voluntarily, by or without judicial proceedings. The retention of a security title to property delivered
9 to a debtor shall be deemed a transfer suffered by the debtor.

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

12 **27-14.3-25.1. Qualified financial contracts.**

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

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

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

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

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

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

31 (4) If a counterparty to a master netting agreement or a qualified financial contract with an
32 insurer subject to a proceeding under this chapter terminates, liquidates, closes out or accelerates
33 the agreement or contract, damages shall be measured as of the date or dates of termination,
34 liquidation, close out or acceleration. The amount of a claim for damages shall be actual direct

1 compensatory damages calculated in accordance with § 27-14.3-25.1(f).

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

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

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

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

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

26 (2) Transfer none of the netting agreements, qualified financial contracts, rights,
27 obligations or property referred to in § 27-14.3-25.1(a)(1) (with respect to the counterparty and any
28 affiliate of the counterparty).

29 (d) If a receiver for an insurer makes a transfer of one or more netting agreements or
30 qualified financial contracts, then the receiver shall use its best efforts to notify any person who is
31 party to the netting agreements or qualified financial contracts of the transfer by twelve o'clock
32 (12:00) p.m. (the receiver's local time) on the business day following the transfer. For purposes of
33 this subsection, "business day" means a day other than a Saturday, Sunday or any day on which
34 either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

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

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

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

15 (ii) Disaffirm or repudiate none of the netting agreements and qualified financial contracts
16 referred to in § 27-14.3-25.1(a) (with respect to the person or any affiliate of the person).

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

30 (g) The term "contractual right" as used in this section includes any right set forth in a rule
31 or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act (7
32 U.S.C., § 1 et seq.)), a multilateral clearing organization (as defined in the Federal Deposit
33 Insurance Corporation Improvement Act of 1991), a national securities exchange, a national
34 securities association, a securities clearing agency, a contract market designated under the

1 Commodity Exchange Act, a derivatives transaction execution facility registered under the
2 Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in
3 a resolution of the governing board thereof and any right, whether or not evidenced in writing,
4 arising under statutory or common law, or under law merchant, or by reason of normal business
5 practice.

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

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

12 **27-14.3-25.2. Setoffs.**

13 (a) For purposes of this chapter and chapter 14.4 of title 27 only, no setoff shall be allowed
14 after the commencement of a delinquency proceeding under this chapter in favor of any person if:

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

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

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

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

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

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

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

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

3 **27-14.3-25.2. Receiver as lien creditor.**

4 For the purposes of this chapter and chapter 14.4 of title 27 only, the receiver may avoid
5 any transfer of or lien upon the property of, or obligation incurred by, an insurer that the insurer or
6 a policyholder, creditor, member or stockholder of the insurer may have avoided without regard to
7 any knowledge of the receiver, the commissioner, the insurer or any policyholder, creditor, member
8 or stockholder of the insurer and whether or not such a policyholder, creditor, member or
9 stockholder exists.

10 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

- 1 This act would update a portion of the Insurance Receivership statute to the current
- 2 National Association of Insurance Commissioners (NAIC) standards.
- 3 This act would take effect upon passage.

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