

HB 2222 -- Insurers Supervision, Rehabilitation and Liquidation Act

Sponsor: Hobbs

This bill changes the laws regarding the Insurers Supervision, Rehabilitation and Liquidation Act to provide for the treatment of qualified financial contracts in insurance insolvency proceedings. In its main provisions, the bill:

(1) Defines "qualified financial contract," commonly used in the financial market, as a commodity contract and forward contract and "netting agreement" as a contract or agreement that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting, liquidation, setoff, termination, acceleration, or closeout under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment of delivery entitlements thereunder among the parties to the netting agreement (Section 375.1152, RSMo);

(2) Allows for the enforcement and recognition of the contractual rights of the insurer's counterparties under qualified financial contracts, netting agreements, and related security agreements to terminate, liquidate, accelerate, or close out contracts; to offset and net off obligations owed under contracts; and to enforce any security rights under agreements, free of any stay or prohibition that might otherwise apply under a delinquency proceeding (Sections 375.1155 and 375.1191.1);

(3) Requires any net or settlement amount owed under a qualified financial contract by the nondefaulting party to an insurer to be transferred to or on the order of the receiver for the insurer (Section 375.1191.2);

(4) Requires a receiver to transfer all netting agreements and qualified financial contracts between an insurer and a single counterparty and its affiliates together if a bulk transfer of insurer liabilities or contracts is made by the receiver (Sections 375.1191.3 and 375.1191.4);

(5) Prohibits a receiver from avoiding a transfer of money or property under a netting agreement or qualified financial contract made prior to the commencement of a formal delinquency proceeding unless the transfer was made with the intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors (Section 375.1191.5); and

(6) Requires the receiver for the insurer to disaffirm or repudiate all contracts if the receiver disaffirms or repudiates any qualified financial contract or netting agreement with a counterparty and establishes the amount of the counterparty's claim in the event of disaffirmance or repudiations. The amount of a claim for damages must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract (Section 375.1191.6).