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By: ~~Senator Gladden~~ **Senators Gladden, Kelley, Klausmeier, Hooper, and Middleton**

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Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Insurance - Delinquency Proceedings Against Insolvent Insurers - Financial**  
3 **Contracts**

4 FOR the purpose of providing that a person may not be stayed or otherwise prohibited  
5 from exercising certain rights under certain circumstances in certain  
6 delinquency proceedings against certain insurers; requiring certain net or  
7 settlement amounts due to an insurer subject to a certain delinquency  
8 proceeding to be transferred to or on the order of the receiver for the insurer;  
9 specifying the manner in which a receiver in a certain delinquency proceeding  
10 must transfer certain netting agreements and qualified financial contracts;  
11 requiring a receiver for an insurer to give notice to parties to certain netting  
12 agreements and qualified financial contracts under certain circumstances;  
13 prohibiting a receiver for an insurer from avoiding a transfer of certain money  
14 or other property under certain circumstances; requiring a receiver to exercise  
15 certain powers to disaffirm or repudiate certain netting agreements and  
16 qualified financial contracts in a certain manner; providing that the rights of  
17 counterparties under certain provisions of law apply to certain netting  
18 agreements and qualified financial contracts; providing for the application of  
19 this Act; defining certain terms; and generally relating to delinquency  
20 proceedings against insolvent insurers.

21 BY adding to  
22 Article - Insurance  
23 Section 9-229.1  
24 Annotated Code of Maryland  
25 (2003 Replacement Volume and 2004 Supplement)



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Insurance**

4 9-229.1.

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
6 INDICATED.

7 (2) "COMMODITY CONTRACT" MEANS:

8 (I) A CONTRACT FOR THE PURCHASE OR SALE OF A COMMODITY  
9 FOR FUTURE DELIVERY ON, OR SUBJECT TO THE RULES OF, A BOARD OF TRADE  
10 DESIGNATED AS A CONTRACT MARKET BY THE COMMODITY FUTURES TRADING  
11 COMMISSION UNDER THE FEDERAL COMMODITY EXCHANGE ACT OR BOARD OF  
12 TRADE OUTSIDE THE UNITED STATES;

13 (II) AN AGREEMENT THAT IS:

14 1. SUBJECT TO REGULATION UNDER § 19 OF THE FEDERAL  
15 COMMODITY EXCHANGE ACT; AND

16 2. COMMONLY KNOWN TO THE COMMODITIES TRADE AS A  
17 MARGIN ACCOUNT, MARGIN CONTRACT, LEVERAGE ACCOUNT, OR LEVERAGE  
18 CONTRACT; OR

19 (III) AN AGREEMENT OR TRANSACTION THAT IS:

20 1. SUBJECT TO REGULATION UNDER § 4C(B) OF THE  
21 FEDERAL COMMODITY EXCHANGE ACT; AND

22 2. COMMONLY KNOWN TO THE COMMODITIES TRADE AS A  
23 COMMODITY OPTION.

24 (3) "CONTRACTUAL RIGHT" MEANS ANY RIGHT, WHETHER OR NOT  
25 EVIDENCED IN WRITING, ARISING UNDER:

26 (I) STATUTORY LAW, COMMON LAW, OR LAW MERCHANT;

27 (II) A RULE OR BYLAW OF A NATIONAL SECURITIES EXCHANGE,  
28 NATIONAL SECURITIES CLEARING ORGANIZATION, OR SECURITIES CLEARING  
29 AGENCY; OR

30 (III) A RULE, BYLAW, OR RESOLUTION OF THE GOVERNING BODY OF  
31 A CONTRACT MARKET OR ITS CLEARING ORGANIZATION.

32 (4) "FORWARD CONTRACT" MEANS A CONTRACT, OTHER THAN A  
33 COMMODITY CONTRACT, FOR THE PURCHASE, SALE, OR TRANSFER OF:



1 (I) A COMMODITY, AS DEFINED IN § 1 OF THE FEDERAL  
2 COMMODITY EXCHANGE ACT; OR

3 (II) ANY SIMILAR GOOD, ARTICLE, SERVICE, RIGHT, OR INTEREST  
4 THAT PRESENTLY IS OR IN THE FUTURE BECOMES THE SUBJECT OF DEALING IN THE  
5 FORWARD CONTRACT TRADE, OR A PRODUCT OR BY-PRODUCT THEREOF, WITH A  
6 MATURITY DATE MORE THAN 2 DAYS AFTER THE DATE THE CONTRACT IS ENTERED  
7 INTO, INCLUDING, BUT NOT LIMITED TO, A REPURCHASE TRANSACTION, REVERSE  
8 REPURCHASE TRANSACTION, CONSIGNMENT, LEASE, SWAP, HEDGE TRANSACTION,  
9 DEPOSIT, LOAN, OPTION, ALLOCATED TRANSACTION, UNALLOCATED TRANSACTION,  
10 OR A COMBINATION OF THESE OR AN OPTION ON ANY OF THEM.

11 (5) (I) "NETTING AGREEMENT" MEANS A CONTRACT OR AGREEMENT,  
12 INCLUDING TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THE  
13 CONTRACT OR AGREEMENT, THAT:

14 1. DOCUMENTS ONE OR MORE TRANSACTIONS BETWEEN  
15 THE PARTIES TO THE CONTRACT OR AGREEMENT FOR OR INVOLVING ONE OR MORE  
16 QUALIFIED FINANCIAL CONTRACTS; AND

17 2. PROVIDES FOR THE NETTING OR LIQUIDATION OF  
18 QUALIFIED FINANCIAL CONTRACTS OR THE PRESENT OR FUTURE PAYMENT  
19 OBLIGATIONS OR PAYMENT ENTITLEMENTS UNDER QUALIFIED FINANCIAL  
20 CONTRACTS, INCLUDING LIQUIDATION OR CLOSE-OUT VALUES RELATING TO THE  
21 OBLIGATIONS OR ENTITLEMENTS, AMONG THE PARTIES TO THE NETTING  
22 AGREEMENT.

23 (II) "NETTING AGREEMENT" INCLUDES A MASTER AGREEMENT  
24 THAT, TOGETHER WITH ALL SCHEDULES, CONFIRMATIONS, DEFINITIONS, AND  
25 ADDENDA TO AND TRANSACTIONS UNDER ANY THEREOF, SHALL BE TREATED AS  
26 ONE NETTING AGREEMENT.

27 (6) "QUALIFIED FINANCIAL CONTRACT" MEANS A COMMODITY  
28 CONTRACT, FORWARD CONTRACT, REPURCHASE AGREEMENT, REVERSE  
29 REPURCHASE AGREEMENT, SECURITIES CONTRACT, SWAP AGREEMENT, OR ANY  
30 SIMILAR AGREEMENT THAT THE COMMISSIONER DETERMINES BY REGULATION OR  
31 ORDER TO BE A QUALIFIED FINANCIAL CONTRACT FOR PURPOSES OF THIS  
32 SUBTITLE.

33 (7) (I) "REPURCHASE AGREEMENT" OR "REVERSE REPURCHASE  
34 AGREEMENT" MEANS AN AGREEMENT, INCLUDING RELATED TERMS, THAT PROVIDES  
35 FOR THE TRANSFER OF CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS'  
36 ACCEPTANCES, OR SECURITIES THAT ARE DIRECT OBLIGATIONS OF, OR THAT ARE  
37 FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY, THE UNITED STATES OR  
38 AN AGENCY OF THE UNITED STATES AGAINST THE TRANSFER OF FUNDS BY THE  
39 TRANSFEREE OF THE CERTIFICATES OF DEPOSIT, ELIGIBLE BANKERS'  
40 ACCEPTANCES, OR SECURITIES WITH A SIMULTANEOUS AGREEMENT BY THE  
41 TRANSFEREE TO TRANSFER TO THE TRANSFEROR CERTIFICATES OF DEPOSIT,  
42 ELIGIBLE BANKERS' ACCEPTANCES, OR SECURITIES AS DESCRIBED ABOVE IN THIS



1 SUBPARAGRAPH (I) AT A CERTAIN DATE NOT LATER THAN 1 YEAR AFTER THE  
2 TRANSFERS OR ON DEMAND, AGAINST THE TRANSFER OF FUNDS.

3 (II) FOR PURPOSES OF THE DEFINITIONS OF "REPURCHASE  
4 AGREEMENT" AND "REVERSE REPURCHASE AGREEMENT" IN SUBPARAGRAPH (I) OF  
5 THIS PARAGRAPH, THE ITEMS THAT MAY BE SUBJECT TO A REPURCHASE  
6 AGREEMENT OR A REVERSE REPURCHASE AGREEMENT INCLUDE  
7 MORTGAGE-RELATED SECURITIES, A MORTGAGE LOAN, AND AN INTEREST IN A  
8 MORTGAGE LOAN, AND DO NOT INCLUDE ANY PARTICIPATION IN A COMMERCIAL  
9 MORTGAGE LOAN UNLESS THE COMMISSIONER DETERMINES BY REGULATION OR  
10 ORDER TO INCLUDE THE COMMERCIAL MORTGAGE LOAN PARTICIPATION.

11 (8) (I) "SECURITIES CONTRACT" MEANS A CONTRACT FOR THE  
12 PURCHASE, SALE, OR LOAN OF A SECURITY, INCLUDING:

13 1. AN OPTION FOR THE REPURCHASE OR SALE OF A  
14 SECURITY, CERTIFICATE OF DEPOSIT, OR GROUP OR INDEX OF SECURITIES,  
15 INCLUDING AN INTEREST THEREIN OR BASED ON THE VALUE THEREOF;

16 2. AN OPTION ENTERED INTO ON A NATIONAL SECURITIES  
17 EXCHANGE RELATING TO FOREIGN CURRENCIES; OR

18 3. THE GUARANTEE OF A SETTLEMENT OF CASH OR  
19 SECURITIES BY OR TO A SECURITIES CLEARING AGENCY.

20 (II) IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, "SECURITY"  
21 INCLUDES A MORTGAGE LOAN, MORTGAGE-RELATED SECURITIES, AND AN  
22 INTEREST IN ANY MORTGAGE LOAN OR MORTGAGE-RELATED SECURITY.

23 (9) "SWAP AGREEMENT" MEANS AN AGREEMENT, INCLUDING THE  
24 TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THE AGREEMENT, THAT  
25 IS A RATE SWAP AGREEMENT, BASIS SWAP, COMMODITY SWAP, FORWARD RATE  
26 AGREEMENT, INTEREST RATE FUTURE, INTEREST RATE OPTION, FORWARD FOREIGN  
27 EXCHANGE AGREEMENT, SPOT FOREIGN EXCHANGE AGREEMENT, RATE CAP  
28 AGREEMENT, RATE FLOOR AGREEMENT, RATE COLLAR AGREEMENT, CURRENCY  
29 SWAP AGREEMENT, CROSS-CURRENCY RATE SWAP AGREEMENT, CURRENCY  
30 FUTURE, CURRENCY OPTION, OR ANY OTHER SIMILAR AGREEMENT, AND INCLUDES  
31 ANY COMBINATION OF AGREEMENTS AND AN OPTION TO ENTER INTO AN  
32 AGREEMENT.

33 (B) NOTWITHSTANDING ANY OTHER PROVISION OF STATE LAW, A PERSON  
34 MAY NOT BE STAYED OR OTHERWISE PROHIBITED FROM EXERCISING:

35 (1) A CONTRACTUAL RIGHT TO TERMINATE, LIQUIDATE, OR CLOSE OUT  
36 ANY NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT WITH AN INSURER  
37 BECAUSE OF:

38 (I) THE INSOLVENCY, FINANCIAL CONDITION, OR DEFAULT OF  
39 THE INSURER AT ANY TIME, PROVIDED THAT THE RIGHT IS ENFORCEABLE UNDER  
40 APPLICABLE LAW OTHER THAN THIS SUBTITLE; OR



1 (II) THE COMMENCEMENT OF A DELINQUENCY PROCEEDING  
2 UNDER THIS SUBTITLE;

3 (2) ANY RIGHT UNDER A PLEDGE, SECURITY, COLLATERAL, OR  
4 GUARANTEE AGREEMENT OR ANY OTHER SIMILAR SECURITY ARRANGEMENT OR  
5 CREDIT SUPPORT DOCUMENT RELATING TO A NETTING AGREEMENT OR QUALIFIED  
6 FINANCIAL CONTRACT; OR

7 (3) SUBJECT TO ANY PROVISION OF § 9-229(B) OF THIS SUBTITLE, ANY  
8 RIGHT TO OFFSET OR NET OUT ANY TERMINATION VALUE, PAYMENT AMOUNT, OR  
9 OTHER TRANSFER OBLIGATION ARISING UNDER OR IN CONNECTION WITH A  
10 NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT IF THE COUNTERPARTY  
11 OR ITS GUARANTOR IS ORGANIZED UNDER THE LAWS OF THE UNITED STATES, A  
12 STATE, OR A FOREIGN JURISDICTION APPROVED BY THE SECURITIES VALUATION  
13 OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS  
14 ELIGIBLE FOR NETTING.

15 (C) (1) NOTWITHSTANDING A PROVISION IN A NETTING AGREEMENT THAT  
16 THE NONDEFAULTING PARTY IS NOT REQUIRED TO PAY ANY NET OR SETTLEMENT  
17 AMOUNT DUE TO THE DEFAULTING PARTY, ON TERMINATION OF THE NETTING  
18 AGREEMENT, THE NET OR SETTLEMENT AMOUNT, IF ANY, OWED BY A  
19 NONDEFAULTING PARTY TO AN INSURER AGAINST WHICH AN APPLICATION OR  
20 PETITION HAS BEEN FILED UNDER THIS SUBTITLE, SHALL BE TRANSFERRED TO OR  
21 ON THE ORDER OF THE RECEIVER FOR THE INSURER, EVEN IF THE INSURER IS THE  
22 DEFAULTING PARTY.

23 (2) ANY LIMITED TWO-WAY PAYMENT PROVISION IN A NETTING  
24 AGREEMENT WITH AN INSURER THAT HAS DEFAULTED SHALL BE DEEMED TO BE A  
25 FULL TWO-WAY PAYMENT PROVISION AS AGAINST THE DEFAULTING INSURER.

26 (3) ANY SUCH NET OR SETTLEMENT AMOUNT SHALL BE A GENERAL  
27 ASSET OF THE INSURER, EXCEPT TO THE EXTENT SUCH NET OR SETTLEMENT  
28 AMOUNT IS SUBJECT TO ONE OR MORE SECONDARY LIENS OR ENCUMBRANCES.

29 (D) IN MAKING A TRANSFER OF A NETTING AGREEMENT OR QUALIFIED  
30 FINANCIAL CONTRACT OF AN INSURER SUBJECT TO A DELINQUENCY PROCEEDING  
31 UNDER THIS SUBTITLE, THE RECEIVER SHALL:

32 (1) TRANSFER TO ONE PARTY, OTHER THAN AN INSURER SUBJECT TO A  
33 DELINQUENCY PROCEEDING UNDER THIS SUBTITLE, ALL NETTING AGREEMENTS  
34 AND QUALIFIED FINANCIAL CONTRACTS BETWEEN A COUNTERPARTY OR AN  
35 AFFILIATE OF A COUNTERPARTY AND THE INSURER THAT IS THE SUBJECT OF THE  
36 DELINQUENCY PROCEEDING, INCLUDING:

37 (I) ALL RIGHTS AND OBLIGATIONS OF EACH PARTY UNDER EACH  
38 NETTING AGREEMENT AND QUALIFIED FINANCIAL CONTRACT; AND

39 (II) ALL PROPERTY, INCLUDING ANY GUARANTEES OR CREDIT  
40 SUPPORT DOCUMENTS, SECURING ANY CLAIMS OF EACH PARTY UNDER EACH  
41 NETTING AGREEMENT AND QUALIFIED FINANCIAL CONTRACT; OR



(2) TRANSFER NONE OF THE NETTING AGREEMENTS, QUALIFIED FINANCIAL CONTRACTS, RIGHTS, OBLIGATIONS, OR PROPERTY REFERRED TO IN ITEM (1) OF THIS SUBSECTION, WITH RESPECT TO THE COUNTERPARTY AND ANY AFFILIATE OF THE COUNTERPARTY.

(E) (1) IF A RECEIVER FOR AN INSURER MAKES A TRANSFER OF ONE OR MORE NETTING AGREEMENTS OR QUALIFIED FINANCIAL CONTRACTS, THE RECEIVER SHALL USE ITS BEST EFFORTS TO NOTIFY ANY PERSON WHO IS PARTY TO THE NETTING AGREEMENTS OR QUALIFIED FINANCIAL CONTRACTS OF THE TRANSFER BY 12:00 P.M., THE RECEIVER'S LOCAL TIME, ON THE BUSINESS DAY FOLLOWING THE TRANSFER.

(2) IN THIS SUBSECTION, "BUSINESS DAY" MEANS A DAY OTHER THAN A SATURDAY, A SUNDAY, OR ANY DAY ON WHICH EITHER THE NEW YORK STOCK EXCHANGE OR THE FEDERAL RESERVE BANK OF NEW YORK IS CLOSED.

(F) (1) NOTWITHSTANDING ANY PROVISION OF THIS SUBTITLE OTHER THAN PARAGRAPH (2) OF THIS SUBSECTION, A RECEIVER MAY NOT AVOID A TRANSFER OF MONEY OR OTHER PROPERTY ARISING UNDER OR IN CONNECTION WITH A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, OR ANY PLEDGE, SECURITY, COLLATERAL, OR GUARANTEE AGREEMENT OR ANY OTHER SIMILAR SECURITY ARRANGEMENT OR CREDIT SUPPORT DOCUMENT RELATING TO A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, THAT IS MADE BEFORE THE COMMENCEMENT OF A DELINQUENCY PROCEEDING UNDER THIS SUBTITLE.

(2) A TRANSFER MAY BE AVOIDED UNDER § 9-221 OF THIS SUBTITLE IF THE TRANSFER WAS MADE WITH ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD THE INSURER, A RECEIVER APPOINTED FOR THE INSURER, OR EXISTING OR FUTURE CREDITORS.

(G) (1) IN EXERCISING ANY OF ITS POWER UNDER THIS SUBTITLE TO DISAFFIRM OR REPUDIATE A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, A RECEIVER SHALL TAKE ACTION WITH RESPECT TO EACH NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT AND ALL TRANSACTIONS ENTERED INTO IN CONNECTION WITH EACH NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, IN ITS ENTIRETY.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, ANY CLAIM OF A COUNTERPARTY AGAINST THE ESTATE ARISING FROM A RECEIVER'S DISAFFIRMANCE OR REPUDIATION OF A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT THAT HAS NOT BEEN PREVIOUSLY AFFIRMED IN THE LIQUIDATION OR IMMEDIATELY PRECEDING REHABILITATION PROCEEDING SHALL BE DETERMINED AND SHALL BE ALLOWED OR DISALLOWED:

(I) AS IF THE CLAIM HAD ARISEN BEFORE THE DATE OF THE FILING OF THE PETITION FOR LIQUIDATION; OR

(II) IF A REHABILITATION PROCEEDING IS CONVERTED TO A LIQUIDATION PROCEEDING, AS IF THE CLAIM HAD ARISEN BEFORE THE DATE OF THE FILING OF THE PETITION FOR REHABILITATION.



1                   (3)       (I)       THE AMOUNT OF THE CLAIM IDENTIFIED IN PARAGRAPH (2) OF  
2 THIS SUBSECTION SHALL BE THE ACTUAL DIRECT COMPENSATORY DAMAGES  
3 DETERMINED AS OF THE DATE OF THE DISAFFIRMANCE OR REPUDIATION OF THE  
4 NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT.

5                   (II)       IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, "ACTUAL DIRECT  
6 COMPENSATORY DAMAGES" DOES NOT INCLUDE PUNITIVE OR EXEMPLARY  
7 DAMAGES, DAMAGES FOR LOST PROFITS OR LOST OPPORTUNITY, OR DAMAGES FOR  
8 PAIN AND SUFFERING, BUT DOES INCLUDE NORMAL AND REASONABLE COSTS OF  
9 COVER OR OTHER REASONABLE MEASURES OF DAMAGES USED IN THE DERIVATIVES  
10 MARKET FOR THE CONTRACT AND AGREEMENT CLAIMS.

11       (H)       ALL RIGHTS OF COUNTERPARTIES UNDER THIS SUBTITLE SHALL APPLY  
12 TO NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS ENTERED INTO  
13 ON BEHALF OF:

14                   (1)       THE GENERAL ACCOUNT; OR

15                   (2)       SEPARATE ACCOUNTS IF THE ASSETS OF EACH SEPARATE ACCOUNT  
16 ARE AVAILABLE ONLY TO COUNTERPARTIES TO NETTING AGREEMENTS AND  
17 QUALIFIED FINANCIAL CONTRACTS ENTERED INTO ON BEHALF OF THAT SEPARATE  
18 ACCOUNT.

19       (I)       THIS SECTION DOES NOT APPLY TO A PERSON THAT IS AN AFFILIATE OF  
20 THE INSURER THAT IS THE SUBJECT OF A DELINQUENCY PROCEEDING UNDER THIS  
21 SUBTITLE.

22       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2005.