

<p>Proposed Amendments for SB 166  February 20, 2013  Prepared by Ken Wilke  Office of the Revisor of Statutes</p>
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1 exchange or the federal reserve bank of New York is closed.

2 (e) (1) Notwithstanding any other provision of this act to the contrary,  
3 except as provided in paragraph (2), a receiver shall not avoid a transfer of  
4 money or other property arising under or in connection with a netting  
5 agreement or qualified financial contract, or any pledge, security, collateral  
6 or guarantee agreement or any other similar security arrangement or credit  
7 support document relating to such netting agreement or qualified financial  
8 contract ~~of~~ made before the commencement of a formal delinquency  
9 proceeding under this act.

10 (2) However, a transfer may be avoided under subsection (a) of  
11 K.S.A. 40-3629, and amendments thereto, if such transfer was made with  
12 actual intent to hinder, delay or defraud the insurer, a receiver appointed  
13 for the insurer or existing or future creditors.

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

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

21 (B) disaffirm or repudiate none of the netting agreements and  
22 qualified financial contracts referred to in subsection (f)(1)(A) with respect  
23 to the person or any affiliate of the person;

24 (2) notwithstanding any other provisions of this act, any claim of a  
25 counterparty against the estate arising from the receiver's disaffirmance or  
26 repudiation of a netting agreement or qualified financial contract that has  
27 not been previously affirmed in the liquidation or immediately preceding a  
28 conservation or rehabilitation case shall be determined and shall be  
29 allowed or disallowed.

30 (A) As if the claim had arisen before the date of the filing of the  
31 petition for liquidation; or

32 (B) if a conservation or rehabilitation proceeding is converted to a  
33 liquidation proceeding, as if the claim had arisen before the date of the  
34 filing of the petition for conservation or rehabilitation.

35 (3) The amount of the claim shall be the actual direct compensatory  
36 damages determined as of the date of the disaffirmance or repudiation of  
37 the netting agreement or qualified financial contract.

38 (4) (A) The term "actual direct compensatory damages" does not  
39 include punitive or exemplary damages, damages for lost profit or lost  
40 opportunity or damages for pain and suffering.

41 (B) The term "actual direct compensatory damages" does include  
42 normal and reasonable costs of cover or other reasonable measures of  
43 damages utilized in the derivatives, securities or other market for the