SHORT TITLE: Insurance; offset of mutual debts and credits; making certain provisions applicable to life and accident and health insurance agreements entered into on and after certain date; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1170 By: Stipe

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 1991, Section 1928, which relates to offset of certain mutual debts and credits; making certain provisions applicable to life and accident and health insurance agreements entered into on and after certain date; providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 1928, is amended to read as follows:

Section 1928. A. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection B of this section.

B. No offset shall be allowed in favor of any such person where:

1. The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in Section 1925 of this article, entitle ~~him~~ the person to share as a claimant in the assets of the insurer; or

2. The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset; or

3. The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers

of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer; or

4. The obligation of the insurer to such person was the result of a life or accident and health reinsurance agreement that contains terms or conditions structured to avoid reasonable risk transfer and indemnification criteria, including but not limited to:

a. a reinsurance agreement the primary effect of which is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for mortality, morbidity or surrender benefit participation by the reinsurer consistent with its participation in the deficiency or excess interest portion of the policies reinsured,

b. allowing the reserve credit taken by the ceding insurer to be in excess of the actuarial reserve necessary, under the Oklahoma Insurance Code, and applicable rules or regulations, including actuarial interpretations or standards adopted by the Insurance Department, to support the policy obligations transferred under the reinsurance agreement,

c. requiring the ceding insurer to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience,

d. depriving the ceding insurer of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus,

e. requiring the ceding insurer at specific points in time scheduled in the agreement to terminate or automatically recapture all or part of the reinsurance ceded,

f. a provision that no cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account", and no funds in such account are available for the payment of claims, or

g. a reinsurance agreement involving the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies.

C. The provisions of paragraph 4 of subsection B of this section shall apply to life and accident and health reinsurance agreements made and entered into on and after November 1, 1988.

SECTION 2. This act shall become effective November 1, 1996.

45-2-2060 JY