

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 2043

6 By: Brown

7 COMMITTEE SUBSTITUTE

8 An Act relating to insurance; amending 36 O.S. 2001,  
9 Sections 2024, 2025, 2028, 2032, 2036 and 2042, which  
10 relate to the Oklahoma Life and Health Insurance  
11 Guaranty Association Act; adding, modifying and  
12 deleting definitions; modifying coverage pursuant to  
13 the Oklahoma Life and Health Insurance Guaranty  
14 Association Act; modifying actions that the  
15 Association may take regarding an impaired insurer;  
16 modifying duties of the Association; authorizing the  
17 Association to join certain organization; providing  
18 procedures relating to the assumption of certain  
19 contracts; stating venue for certain actions;  
20 authorizing the Association to issue certain  
21 coverage; modifying duties of the Insurance  
22 Commissioner; authorizing the board of directors to  
23 make certain reports and recommendations; authorizing  
24 the Association and other similar associations to be  
entitled to certain disbursement of assets;  
increasing time period for the staying of certain  
proceedings; specifying that certain provisions are  
not applicable to certain insurers; repealing 36 O.S.  
2001, Sections 2029 and 2033, which relate to the  
Oklahoma Life and Health Insurance Guaranty  
Association and reports relating to insurer  
insolvencies; providing for codification; and  
providing an effective date.

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

1 SECTION 1. AMENDATORY 36 O.S. 2001, Section 2024, is  
2 amended to read as follows:

3 Section 2024. As used in ~~Section~~ Sections 2021 et seq. through  
4 2043 of this title:

5 1. "Account" means ~~any~~ either of the ~~three~~ two accounts created  
6 under Section 2023 of ~~the Insurance Code~~ this title;

7 2. "Association" means the Oklahoma Life and Health Insurance  
8 Guaranty Association created in Section 2023 of ~~the Insurance Code~~  
9 this title;

10 3. ~~"Board" means Board of Directors of the Oklahoma Life and~~  
11 ~~Health Insurance Guaranty Association~~ "Commissioner" means the  
12 Oklahoma Insurance Commissioner;

13 4. "Contractual obligation" means ~~any~~ an obligation under a  
14 policy or contract or certificate under a group policy or contract,  
15 or portion thereof for which coverage is provided under Section 2025  
16 of ~~the Insurance Code~~ this title;

17 5. "Covered policy" means ~~any~~ a policy or contract ~~specified in~~  
18 or portion of a policy or contract for which coverage is provided  
19 under Section 2025 of ~~the Insurance Code~~ this title;

20 6. "Extra-contractual claims" includes, but is not limited to,  
21 claims relating to bad faith in the payment of claims, punitive or  
22 exemplary damages or attorneys fees and costs;

23 7. "Impaired insurer" means a member insurer which, after the  
24 effective date of this act, is not an insolvent insurer and-

1 a. ~~is deemed by the Commissioner to be potentially unable~~  
2 ~~to fulfill its contractual obligations; or~~

3 ~~b.~~ is placed under an order of rehabilitation or  
4 conservation by a court of competent jurisdiction;

5 ~~7.~~ 8. "Insolvent insurer" means a member insurer which, after  
6 the effective date of this act, is placed under an order of  
7 liquidation by a court of competent jurisdiction with a finding of  
8 insolvency;

9 ~~8.~~ 9. "Member insurer" means any nonprofit hospital service and  
10 medical indemnity corporation and any insurer licensed or ~~which~~ that  
11 holds a certificate of authority to transact in this state any kind  
12 of insurance for which coverage is provided under Section 2025 of  
13 ~~the Insurance Code~~ this title, and includes any insurer whose  
14 license or certificate of authority in this state may have been  
15 suspended, revoked, not renewed or voluntarily withdrawn, but does  
16 not include:

17 a. ~~A~~ a health maintenance organization~~,~~,

18 b. ~~A~~ a fraternal benefit society~~,~~,

19 c. ~~A~~ a mandatory state-pooling plan~~,~~,

20 d. ~~A~~ a mutual assessment company or ~~any entity~~ other  
21 person that operates on an assessment basis~~,~~,

22 e. ~~An~~ an insurance exchange~~,~~,

1 f. ~~Any~~ an organization that has a certificate or license  
2 limited to the issuance of charitable gift annuities  
3 under Sections 4071 through 4082 of this title, or

4 g. any entity similar to any of the above;

5 ~~9.~~ 10. "Moody's Corporate Bond Yield Average" means the Monthly  
6 Average Corporates as published by Moody's Investors Service, Inc.,  
7 or any successor thereto;

8 ~~10.~~ 11. "Owner, "policy owner" or "contract owner" means the  
9 person who is identified as the legal owner of a policy or contract  
10 under the terms of the policy or contract or who is otherwise vested  
11 with legal title to the policy or contract through a valid  
12 assignment completed in accordance with the terms of the policy or  
13 contract and properly recorded as the owner on the books of the  
14 insurer. Owner, policy owner or contract owner does not include  
15 persons with a mere beneficial interest in a policy or contract;

16 12. "Person" means ~~any~~ an individual, corporation, limited  
17 liability company, partnership, association, governmental body or  
18 entity, or voluntary organization;

19 ~~11.~~ "Premium" 13. "Premiums" means amounts or considerations  
20 by whatever name called, received on covered policies or contracts  
21 less returned premiums, considerations and deposits returned  
22 thereon, and less dividends and experience credits thereon.

23 "Premiums" does not include ~~any~~ amounts or considerations received  
24 for ~~any~~ policies or contracts or for the portions of any policies or

1 contracts for which coverage is not provided under subsection B of  
2 Section 2025 of ~~the Insurance Code~~ this title except that assessable  
3 premium shall not be reduced on account of subparagraph (c) of  
4 paragraph 2 of subsection B of Section 2025 of this title relating  
5 to interest limitations and paragraph 2 of subsection C of Section  
6 2025 of this title relating to limitations with respect to ~~any~~ one  
7 life individual, one participant and one contract owner. Premiums  
8 does not include:

9       a. premiums on an unallocated annuity contract, or

10       b. premiums in excess of Five Million Dollars

11               (\$5,000,000.00) on multiple non-group policies of life  
12               insurance owned by one owner, whether the policy owner  
13               is an individual, firm, corporation, or other person,  
14               and whether the persons insured are officers,  
15               managers, employees or other persons, regardless of  
16               the number of policies or contracts held by the owner;

17       14. "Principal place of business" of a person other than a  
18       natural person means the single state in which the natural persons  
19       who establish policy for the direction, control and coordination of  
20       the operations of the entity as a whole primarily exercise that  
21       function, determined by the Association in its reasonable judgment  
22       by considering the following factors:

23       a. the state in which the primary executive and

24               administrative headquarters of the entity are located,

- 1        b. the state in which the principal office of the chief  
2        executive officer of the entity is located,
- 3        c. the state in which the board of directors or similar  
4        governing person or persons of the entity conducts the  
5        majority of its meetings,
- 6        d. the state in which the executive or management  
7        committee of the board of directors or similar  
8        governing person or persons of the entity conducts the  
9        majority of its meetings,
- 10       e. the state from which the management of the overall  
11       operations of the entity is directed, and
- 12       f. in the case of a benefit plan sponsored by affiliated  
13       companies comprising a consolidated corporation, the  
14       state in which the holding company or controlling  
15       affiliate has its principal place of business as  
16       determined using the factors listed in subparagraphs a  
17       through e of this paragraph;

18       15. "Receivership court" means the court in the insolvent or  
19       impaired state of the insurer having jurisdiction over the  
20       conservation, rehabilitation or liquidation of the insurer;

21       ~~12.~~ 16. "Resident" means any a person to whom a contractual  
22       obligation is owed and who resides in this state at the time a  
23       ~~member insurer is determined to be an impaired or insolvent insurer~~  
24       ~~and to whom a contractual obligation is owed~~ on the date of entry of

1 a court order that determines a member insurer to be an impaired  
2 insurer or a court order that determines a member insurer to be an  
3 insolvent insurer. A person may be a resident of only one state,  
4 which in the case of a person other than a natural person shall be  
5 its principal place of business. Citizens of the United States that  
6 are either residents of foreign countries or residents of the United  
7 States possessions, territories or protectorates that do not have an  
8 association similar to the Association created by the Oklahoma Life  
9 and Health Insurance Guaranty Association Act, shall be deemed  
10 residents of the state of domicile of the insurer that issued the  
11 policy or contract; and

12 ~~13.~~ 17. "State" means a state of the United States, the  
13 district of Columbia, Puerto Rico, or a United States possession,  
14 territory or protectorate;

15 18. "Structured settlement annuity" means an annuity purchased  
16 in order to fund periodic payments for a plaintiff or other claimant  
17 in payment for or with respect to personal injury suffered by a  
18 plaintiff or other claimant;

19 19. "Supplemental contract" means ~~any~~ a written agreement  
20 entered into for the distribution of ~~policy or contract~~ proceeds  
21 under a life, health or annuity policy or contract; and

22 20. "Unallocated annuity contract" means an annuity contract or  
23 group annuity certificate which is not issued to and owned by an  
24

1 individual, except to the extent of any annuity benefits guaranteed  
2 to an individual by an insurer under the contract or certificate.

3 SECTION 2. AMENDATORY 36 O.S. 2001, Section 2025, is  
4 amended to read as follows:

5 Section 2025. A. For the policies and contracts specified in  
6 subsection B of this section, ~~this act~~ the Oklahoma Life and Health  
7 Insurance Guaranty Association Act shall provide coverage:

8 1. a. ~~to~~ To persons, who regardless of where they reside,  
9 except for nonresident certificate holders under group  
10 policies or contracts, are the beneficiaries,  
11 assignees or payees of the persons covered under  
12 subparagraph b of this paragraph,

13 b. To persons who are owners of or certificate holders  
14 under ~~such~~ the policies or contracts, other than  
15 structured settlement annuities, and in each case who:

16 ~~a.~~

17 (1) are residents, or

18 ~~b.~~

19 (2) are not residents, but only under all of the  
20 following conditions:

21 ~~(1)~~

22 (a) the ~~insurers which~~ insurer that issued ~~such~~  
23 the policies or contracts are domiciled in  
24 this state,

1 ~~(2) such insurers never held a license or certificate~~  
2 ~~of authority in the states in which such persons~~  
3 ~~reside,~~

4 ~~(3) such~~

5 (b) the states in which the persons reside have  
6 associations similar to the Oklahoma Life  
7 and Health Insurance Guaranty Association  
8 created by this act, and

9 ~~(4) such~~ the persons are not eligible for coverage by  
10 such other states' associations an association in  
11 any other state due to the fact that the insurer  
12 was not licensed in the state at the time  
13 specified in the guaranty association law of the  
14 state; and

15 2. ~~to persons who, regardless of where they reside, are the~~  
16 ~~beneficiaries, assignees or payees of the persons covered under~~  
17 ~~paragraph 1 of this subsection except for nonresident certificate~~  
18 ~~holders under group policies or contracts~~ Subparagraphs a and b of  
19 paragraph 1 of this subsection shall not apply to structured  
20 settlement annuities specified in subsection B of this section and  
21 in the Oklahoma Life and Health Insurance Guaranty Association Act  
22 shall, except as provided in paragraphs 3 and 4 of this subsection,  
23 provide coverage to a person who is a payee under a structured  
24

1 settlement annuity or a beneficiary of a payee if the payee is  
2 deceased, if the payee:

3 a. is a resident, regardless of where the contract owner  
4 resides, or

5 b. is not a resident, but only under both of the  
6 following conditions:

7 (1) (a) the contract owner of the structured  
8 settlement annuity is a resident, or

9 (b) the contract owner of the structured  
10 settlement annuity is not a resident but:

11 i. the insurer that issued the structured  
12 settlement annuity is domiciled in this  
13 state, and

14 ii. the state in which the contract owner  
15 resides has an association similar to  
16 the association created by the Oklahoma  
17 Life and Health Insurance Guaranty  
18 Association Act, and

19 (2) neither the payee nor beneficiary nor the  
20 contract owner is eligible for coverage by the  
21 association of the state in which the payee or  
22 contract owner resides;

23 3. The Oklahoma Life and Health Insurance Guaranty Association  
24 Act shall not provide coverage to a person who is a payee or

1 beneficiary of a contract owner resident of this state, if the payee  
2 or beneficiary is afforded coverage by the association of another  
3 state; and

4 4. The Oklahoma Life and Health Insurance Guaranty Association  
5 Act is intended to provide coverage to a person who is a resident of  
6 this state and in special circumstances, to a nonresident. In order  
7 to avoid duplicate coverage, if a person who would otherwise receive  
8 coverage under the Oklahoma life and Health Insurance Guaranty  
9 Association Act is provided coverage under the laws of any other  
10 state, the person shall not be provided coverage under the Oklahoma  
11 Life and Health Insurance Guaranty Association Act. In determining  
12 the application of the provisions of this paragraph to situations  
13 where a person could be covered by the association of more than one  
14 state, whether as an owner, payee, beneficiary or assignee, the  
15 Oklahoma Life and Health Insurance Association Act shall be  
16 construed in conjunction with the laws of other states to result in  
17 coverage by only one association.

18 B. 1. ~~This act~~ The Oklahoma Life and Health Insurance Guaranty  
19 Association Act shall provide coverage to the persons specified in  
20 subsection A of this section for direct, ~~nongroup~~ nongroup life,  
21 health, annuity and supplemental policies or contracts, and for  
22 certificates under direct group policies and contracts, ~~issued by~~  
23 ~~member insurers,~~ except as limited by ~~this act~~ the Oklahoma Life and  
24 Health Insurance Guaranty Association Act. Annuity contracts and

1 certificates under group annuity contracts include allocated funding  
2 agreements, structured settlement annuities and any immediate or  
3 deferred annuity contracts.

4 2. This act shall not provide coverage for:

5 a. ~~any~~ a portion of a policy or contract not guaranteed  
6 by the insurer, or under which the risk is borne by  
7 the policy or contract ~~holder,~~ owner,

8 b. ~~any~~ a policy or contract of reinsurance, unless  
9 assumption certificates have been issued, pursuant to  
10 the reinsurance policy or contract,

11 c. ~~any~~ a portion of a policy or contract to the extent  
12 that the rate of interest on which it is based, or the  
13 interest rate, crediting rate or similar factor  
14 determined by use of an index or other external  
15 reference stated in the policy or contract employed in  
16 calculating returns or changes in value:

17 (1) averaged over the period of four (4) years prior  
18 to the date on which the Association becomes  
19 obligated with respect to ~~such~~ the policy or  
20 contract, exceeds a rate of interest determined  
21 by subtracting two (2) percentage points from  
22 Moody's Corporate Bond Yield Average averaged for  
23 that same four-year period or for such lesser  
24 period if the policy or contract was issued less

1 than four (4) years before the Association became  
2 obligated, and

3 (2) on and after the date on which the Association  
4 becomes obligated with respect to ~~such~~ the policy  
5 or contract, exceeds the rate of interest  
6 determined by subtracting three (3) percentage  
7 points from Moody's Corporate Bond Yield Average  
8 as most recently available~~;~~,

9 d. ~~any~~ a portion of a policy or contract issued to a plan  
10 or program of an employer, association or ~~similar~~  
11 entity other person to provide life, health or annuity  
12 benefits to its employees ~~or,~~ members or others, to  
13 the extent that ~~such~~ the plan or program is  
14 self-funded or uninsured, including but not limited to  
15 benefits payable by an employer, association or  
16 ~~similar entity other person~~ under:

17 (1) a Multiple Employer Welfare Arrangement as  
18 defined in ~~Section 514 of the Employee Retirement~~  
19 ~~Income Security Act of 1974, as amended~~ 29 U.S.C.  
20 Section 1144,

21 (2) a minimum premium group insurance plan,

22 (3) a stop-loss group insurance plan, or

23 (4) an administrative services only contract;

24

1 e. ~~any~~ a portion of a policy or contract to the extent  
2 that it provides for:

3 (1) dividends or experience rating credits, ~~or~~  
4 ~~provides that~~

5 (2) voting rights, or

6 (3) payment of any fees or allowances ~~be paid~~ to any  
7 person, including the policy or contract ~~holder~~  
8 owner, in connection with the service to or  
9 administration of ~~such~~ the policy or contract~~,,~~

10 f. ~~any~~ a policy or contract issued in this state by a  
11 member insurer at a time when it was not licensed or  
12 did not have a certificate of authority to issue ~~such~~  
13 the policy or contract in this state~~,,~~

14 g. ~~any annuity contract or group annuity certificate~~  
15 ~~which is not issued to and owned by an individual,~~  
16 ~~except to the extent of any annuity benefits~~  
17 ~~guaranteed to an individual by an insurer under such~~  
18 ~~contract or certificate; and~~ a portion of a policy or  
19 contract to the extent that the assessments required  
20 by Section 2030 of this title with respect to the  
21 policy or contract are preempted by federal or state  
22 law,

23 h. ~~any policy or contract issued by those insurers~~  
24 ~~enumerated in Section 110 of the Insurance Code~~ an

1 obligation that does not arise under the express  
2 written terms of the policy or contract issued by the  
3 insurer to the contract or policy owner, including  
4 without limitation:

5 (1) claims based on marketing materials,

6 (2) claims based on side letters, riders or other  
7 documents that were issued by the insurer without  
8 meeting applicable policy form filing or approval  
9 requirements,

10 (3) misrepresentations of or regarding policy  
11 benefits,

12 (4) extra-contractual claims, or

13 (5) a claim for penalties or consequential or  
14 incidental damages,

15 i. a contractual agreement that establishes the  
16 obligations of the member insurer to provide a book  
17 value accounting guaranty for defined contribution  
18 benefit plan participants by reference to a portfolio  
19 of assets that is owned by the benefit plan or its  
20 trustee, which in each case is not an affiliate of the  
21 member insurer,

22 j. an unallocated annuity contract,

23 k. a portion of a policy or contract to the extent it  
24 provides for interest or other changes in value to be

1 determined by the use of an index or other external  
2 reference stated in the policy or contract, but which  
3 have not been credited to the policy or contract, or  
4 as to which the policy or contract owner's rights are  
5 subject to forfeiture, as of the date the member  
6 insurer becomes an impaired or insolvent insurer under  
7 the Oklahoma Life and Health Insurance Guaranty  
8 Association Act, whichever is earlier. If a policy's  
9 or contract's interest or changes in value are  
10 credited less frequently than annually, then for  
11 purposes of determining the values that have been  
12 credited and are not subject to forfeiture under this  
13 subparagraph, the interest or change in value  
14 determined by using the procedures defined in the  
15 policy or contract will be credited as if the  
16 contractual date of crediting interest or changing  
17 values was the date of impairment or insolvency,  
18 whichever is earlier, and will not be subject to  
19 forfeiture, or

- 20 1. a policy or contract providing any hospital, medical,  
21 prescription drug or other health care benefits  
22 pursuant to Part C or Part D of Subchapter XVIII,  
23 Chapter 7 of Title 42 of the United States Code,  
24

1 commonly known as Medicare Part C or Part D, or any  
2 regulations issued pursuant thereto.

3 C. The benefits ~~for which~~ that the Association may become  
4 liable obligated to cover shall in no event exceed the lesser of:

5 1. ~~the~~ The contractual obligations for which the insurer is  
6 liable or would have been liable if it were not an impaired or  
7 insolvent insurer; or

8 2. a. with respect to any one life, regardless of the number  
9 of policies or contracts:

10 ~~a.~~

11 (1) Three Hundred Thousand Dollars (\$300,000.00) in  
12 life insurance death benefits, but not more than  
13 One Hundred Thousand Dollars (\$100,000.00) in net  
14 cash surrender and net cash withdrawal values for  
15 life insurance,

16 ~~b. Three Hundred Thousand Dollars (\$300,000.00) in health~~  
17 ~~insurance benefits, including any net cash surrender~~  
18 ~~and net cash withdrawal values,~~

19 ~~c. Three Hundred Thousand Dollars (\$300,000.00) in the~~  
20 ~~present value of annuity benefits, including net cash~~  
21 ~~surrender and net cash withdrawal values; provided,~~

22 (2) in health insurance benefits:

23 (a) One Hundred Thousand Dollars (\$100,000.00)

24 for coverages not defined as disability

1 insurance or basic hospital, medical and  
2 surgical insurance or major medical  
3 insurance or long-term care insurance as  
4 defined in Section 4424 of this title,  
5 including any net cash surrender and net  
6 cash withdrawal values,

7 (b) Three Hundred Thousand Dollars (\$300,000.00)  
8 for insurance providing income payments to  
9 an insured wage earner when income is  
10 interrupted or terminated because of  
11 illness, sickness or accident, commonly  
12 known as disability insurance and Three  
13 Hundred Thousand Dollars (\$300,000.00) for  
14 long-term care insurance as defined in  
15 Section 4424 of this title, and

16 (c) Five Hundred Thousand Dollars (\$500,000.00)  
17 for basic hospital, medical and surgical  
18 insurance or insurance providing coverage in  
19 excess of that provided by a basic hospital,  
20 medical and surgical insurance, commonly  
21 known as major medical insurance, or

22 (3) Three Hundred Thousand Dollars (\$300,000.00) in  
23 the present value of annuity benefits, including  
24

1                   net cash surrender and net cash withdrawal  
2                   values, or

3       b. with respect to each payee of a structured settlement  
4       annuity or beneficiary or beneficiaries of the payee  
5       if the payee is deceased, Three Hundred Thousand  
6       Dollars (\$300,000.00) in present value annuity  
7       benefits, in the aggregate, including net cash  
8       surrender and net cash withdrawal values,

9       c. however, that in no event shall the Association be  
10       liable obligated to expend cover more than:

11       (1) an aggregate of Three Hundred Thousand Dollars  
12       (\$300,000.00) in the aggregate benefits with  
13       respect to any one life under this subparagraph  
14       and subparagraphs a, and b and e of this  
15       subparagraph paragraph except with respect to  
16       benefits for basic hospital, medical and surgical  
17       insurance and major medical insurance under  
18       division (2) of subparagraph a of this paragraph,  
19       in which case the aggregate liability of the  
20       Association shall not exceed Five Hundred  
21       Thousand Dollars (\$500,000.00) with respect to  
22       any one individual, or

23       (2) with respect to one owner of multiple non-group  
24       policies of life insurance, whether the policy

1 owner is an individual, firm, corporation or  
2 other person, and whether the persons insured  
3 are officers, managers, employees or other  
4 persons, more than Five Million Dollars  
5 (\$5,000,000.00) in benefits, regardless of the  
6 number of policies and contracts held by the  
7 owner,

8 d. the limitations set forth in this subsection are  
9 limitations on benefits for which the Association is  
10 obligated before taking into account either its  
11 subrogation and assignment rights or the extent to  
12 which those benefits could be provided out of the  
13 assets of the impaired or insolvent insurer  
14 attributable to covered policies. The costs of the  
15 obligations of the Association under the Oklahoma Life  
16 and Health Insurance Guaranty Association Act may be  
17 met by the use of assets attributable to covered  
18 policies or reimbursed to the Association pursuant to  
19 its subrogation and assignment rights.

20 ~~D. The liability of the Association is strictly limited by the~~  
21 ~~express terms of such covered policies and contracts and by the~~  
22 ~~provisions of this act and is not affected by the contents of any~~  
23 ~~brochures, illustrations, advertisements, or oral statements by~~  
24 ~~agents, brokers or others used or made in connection with their~~

1 ~~sale. The Association is not liable for any extracontractual,~~  
2 ~~exemplary or punitive damages, attorney's fees or interest other~~  
3 ~~than as provided for by the terms of such policies or contracts, as~~  
4 ~~limited by this act~~ In performing its obligations to provide  
5 coverage under Section 2028 of this title, the Association shall not  
6 be required to guarantee, assume, reinsure or perform, or cause to  
7 be guaranteed, assumed, reinsured or performed, the contractual  
8 obligations of the insolvent or impaired insurer under a covered  
9 policy or contract that do not materially affect the economic values  
10 or economic benefits of the covered policy or contract.

11 SECTION 3. AMENDATORY 36 O.S. 2001, Section 2028, is  
12 amended to read as follows:

13 Section 2028. A. If a member insurer is an impaired ~~domestic~~  
14 insurer, the Oklahoma Life and Health Insurance Guaranty Association  
15 may, in its discretion, and subject to any conditions imposed by the  
16 Association that do not impair the contractual obligations of the  
17 impaired insurer, and that are approved by the Commissioner, ~~and~~  
18 ~~that are, except in cases of court ordered conservation or~~  
19 ~~rehabilitation, also approved by the impaired insurer:~~

20 1. ~~guarantee~~ Guarantee, assume or reinsure, or cause to be  
21 guaranteed, assumed or reinsured, any or all of the policies or  
22 contracts of the impaired insurer; or

23 2. ~~provide such~~ Provide monies, pledges, notes, guarantees or  
24 other means as are proper to effectuate paragraph 1 of this

1 subsection, and assure payment of the contractual obligations of the  
2 impaired insurer pending action under paragraph 1 of this  
3 subsection; ~~or~~

4 ~~3. loan money to the impaired insurer.~~

5 ~~B. 1. If a member insurer is an impaired insurer, whether~~  
6 ~~domestic, foreign or alien, and the insurer is not paying claims~~  
7 ~~timely, then subject to the preconditions specified in paragraph 2~~  
8 ~~of this subsection, the Association shall, in its discretion,~~  
9 ~~either:~~

10 ~~a. take any of the actions specified in subsection A of~~  
11 ~~this section, subject to the conditions therein, or~~

12 ~~b. provide substitute benefits in lieu of the contractual~~  
13 ~~obligations of the impaired insurer solely for: health~~  
14 ~~claims; periodic annuity benefit payments; death~~  
15 ~~benefits; supplemental benefits; and cash withdrawals~~  
16 ~~for policy or contract owners who petition therefor~~  
17 ~~under claims of emergency or hardship in accordance~~  
18 ~~with standards proposed by the Association and~~  
19 ~~approved by the Commissioner.~~

20 ~~2. The Association shall be subject to the requirements of~~  
21 ~~paragraph 1 of this subsection only if:~~

22 ~~a. the impaired insurer is a foreign or alien insurer:~~  
23 ~~(1) which has been prohibited from soliciting or~~  
24 ~~accepting new business in this state, and~~

- 1 ~~(2) whose certificate of authority has been suspended~~  
2 ~~or revoked in this state, and~~
- 3 ~~(3) for which a petition for rehabilitation or~~  
4 ~~liquidation has been filed in a court of~~  
5 ~~competent jurisdiction in the insurer's state of~~  
6 ~~domicile by the Insurance Commissioner of that~~  
7 ~~state, and~~
- 8 ~~(4) the laws of the impaired insurer's state of~~  
9 ~~domicile provide that until all payments of or on~~  
10 ~~account of the impaired insurer's contractual~~  
11 ~~obligations by all guaranty associations, along~~  
12 ~~with all expenses thereof and interest on all~~  
13 ~~such payments and expenses, shall have been~~  
14 ~~repaid to the guaranty associations or a plan of~~  
15 ~~repayment by the impaired insurer shall have been~~  
16 ~~approved by the guaranty associations, and~~
- 17 ~~(5) the delinquency proceeding shall not be~~  
18 ~~dismissed, and~~
- 19 ~~(6) neither the impaired insurer nor its assets shall~~  
20 ~~be returned to the control of its shareholders or~~  
21 ~~private management, and~~
- 22 ~~(7) it shall not be permitted to solicit or accept~~  
23 ~~new business or have any suspended or revoked~~  
24 ~~license restored; or~~



1 policies or contracts of the insolvent insurer for  
2 claims incurred:

3 (1) with respect to group policies and contracts, not  
4 later than the earlier of the next renewal date  
5 under those policies or contracts or forty-five  
6 (45) days, but in no event less than thirty (30)  
7 days, after the date on which the Association  
8 becomes obligated with respect to the policies  
9 and contracts or,

10 (2) with respect to non-group policies, contracts,  
11 and annuities not later than the earlier of the  
12 next renewal date, if any, under the policies or  
13 contracts for one (1) year, but in no event less  
14 than thirty (30) days, from the date on which the  
15 Association becomes obligated with respect to the  
16 policies or contracts,

17 b. make diligent efforts to provide all known insureds or  
18 annuitants for non-group policies and contracts, or  
19 group policy owners with respect to group policies and  
20 contracts, thirty (30) days' notice of the termination  
21 of the benefits provided pursuant to subparagraph a of  
22 this paragraph,

23 c. with respect to non-group life and health insurance  
24 policies and annuities covered by the Association,

1 make available to each known insured or annuitant, or  
2 owner if other than the insured or annuitant, and with  
3 respect to an individual formerly insured or formerly  
4 and annuitant under a group policy who is not eligible  
5 for replacement group coverage, make available  
6 substitute coverage on an individual basis in  
7 accordance with the provisions of subparagraph d of  
8 this paragraph, if the insureds or annuitants had a  
9 right under law or the terminated policy or annuity to  
10 convert coverage to individual coverage or to continue  
11 an individual policy or annuity in force until a  
12 specified age or for a specified time, during which  
13 the insurer had no right unilaterally to make changes  
14 in any provision of the policy or annuity or had a  
15 right only to make changes in premium by class,

- 16 d. (1) in providing the substitute coverage required  
17 under subparagraph c of this paragraph, the  
18 Association may offer either to reissue the  
19 terminated coverage or to issue an alternative  
20 policy,  
21 (2) alternative or reissued policies shall be offered  
22 without requiring evidence of insurability, and  
23 shall not provide for any waiting period or  
24

1 exclusion that would not have applied under the  
2 terminated policy, and

3 (3) the Association may reinsure any alternative or  
4 reissued policy,

5 e. (1) alternative policies adopted by the Association  
6 shall be subject to the approval of the

7 domiciliary insurance commissioner and the

8 receivership court. The Association may adopt

9 alternative policies of various types for future

10 issuance without regard to any particular

11 impairment or insolvency,

12 (2) alternative policies shall contain at least the  
13 minimum statutory provisions required in this

14 state and provide benefits that shall not be

15 unreasonable in relation to the premium charged.

16 The Association shall set the premium in

17 accordance with a table of rates that it shall

18 adopt. The premium shall reflect the amount of

19 insurance to be provided and the age and class of

20 risk of each insured, but shall not reflect any

21 changes in the health of the insured after the

22 original policy was last underwritten,

23 (3) any alternative policy issued by the Association  
24 shall provide coverage of a type similar to that

1                   of the policy issued by the impaired or insolvent  
2                   insurer, as determined by the Association,

3       f. if the Association elects to reissue terminated  
4       coverage at a premium rate different from that charged  
5       under the terminated policy, the premium shall be set  
6       by the Association in accordance with the amount of  
7       insurance provided and the age and class of risk,  
8       subject to approval of the domiciliary insurance  
9       commissioner and the receivership court,

10      g. the obligations of the Association with respect to  
11      coverage under any policy of the impaired or insolvent  
12      insurer or under any reissued or alternative policy  
13      shall cease on the date the coverage or policy is  
14      replaced by another similar policy by the policy  
15      owner, the insured or the Association,

16      h. when proceeding under paragraph 2 of subsection B of  
17      this section with respect to a policy or contract  
18      carrying guaranteed minimum interest rates, the  
19      Association shall assure the payment or crediting of a  
20      rate of interest consistent with subparagraph c of  
21      paragraph 2 of subsection B of Section 2025 of this  
22      title.

1       ~~D. When proceeding under paragraph 1 of subsection B or~~  
2 ~~paragraph 3 of subsection C of this section, the Association shall,~~  
3 ~~with respect to life and health insurance policies only.~~

4       ~~1. except for terms of conversion and renewability, assure~~  
5 ~~payment of benefits for premiums identical to the premiums and~~  
6 ~~benefits that would have been payable under the policies of the~~  
7 ~~insolvent insurer, for claims incurred:~~

8           ~~a. with respect to group policies, not later than the~~  
9           ~~earlier of the next renewal date under such policies~~  
10           ~~or contracts or forty five (45) days, but in no event~~  
11           ~~less than thirty (30) days, after the date on which~~  
12           ~~the Association becomes obligated with respect to such~~  
13           ~~policies,~~

14           ~~b. with respect to individual policies, not later than~~  
15           ~~the earlier of the next renewal date, if any, under~~  
16           ~~such policies or one (1) year, but in no event less~~  
17           ~~than thirty (30) days, from the date on which the~~  
18           ~~Association becomes obligated with respect to such~~  
19           ~~policies;~~

20       ~~2. make diligent efforts to provide all known insureds or group~~  
21 ~~policyholder with respect to group policies thirty (30) days' notice~~  
22 ~~of the termination of the benefits provided;~~

23       ~~3. make available substitute coverage on an individual basis to~~  
24 ~~each known insured, or owner if other than the insured, of an~~

1 ~~individual policy, and to any individual formerly insured under a~~  
2 ~~group policy who is not eligible for replacement group coverage, if~~  
3 ~~the insureds had a right under law or the terminated policy to~~  
4 ~~convert coverage to individual coverage or to continue an individual~~  
5 ~~policy in force until a specified age or for a specified time,~~  
6 ~~during which the insurer had no right unilaterally to make changes~~  
7 ~~in any provision of the policy or had a right only to make changes~~  
8 ~~in premium by class. In providing said substitute coverage, the~~  
9 ~~Association may offer either to reissue the terminated coverage or~~  
10 ~~to issue an alternative policy.~~

11 ~~Alternative or reissued policies shall be offered without~~  
12 ~~requiring evidence of insurability, and shall not provide for any~~  
13 ~~waiting period or exclusion that would not have applied under the~~  
14 ~~terminated policy. The Association may reinsure any alternative or~~  
15 ~~reissued policy.~~

16 ~~Alternative policies adopted by the Association shall be subject~~  
17 ~~to the approval of the Commissioner. The Association may adopt~~  
18 ~~alternative policies of various types for future issuance without~~  
19 ~~regard to any particular impairment or insolvency.~~

20 ~~Alternative policies shall contain at least the minimum~~  
21 ~~statutory provisions required in this state and provide benefits~~  
22 ~~that shall not be unreasonable in relation to the premium charged.~~  
23 ~~The Association shall set the premium in accordance with a table of~~  
24 ~~rates which it shall adopt. The premium shall reflect the amount of~~

1 ~~insurance to be provided and the age and class of risk of each~~  
2 ~~insured, but shall not reflect any changes in the health of the~~  
3 ~~insured after the original policy was last underwritten.~~

4 ~~Any alternative policy issued by the Association shall provide~~  
5 ~~coverage of a type similar to that of the policy issued by the~~  
6 ~~impaired or insolvent insurer, as determined by the Association.~~

7 ~~If the Association elects to reissue terminated coverage at a~~  
8 ~~premium rate different from that charged under the terminated~~  
9 ~~policy, the premium shall be set by the Association in accordance~~  
10 ~~with the amount of insurance provided and the age and class of risk,~~  
11 ~~subject to approval of the Commissioner or by a court of competent~~  
12 ~~jurisdiction.~~

13 ~~The Association's obligations with respect to coverage under any~~  
14 ~~policy of the impaired or insolvent insurer or under any reissued or~~  
15 ~~alternative policy shall cease on the date such coverage or policy~~  
16 ~~is replaced by another similar policy by the policyholder, the~~  
17 ~~insured or the Association.~~

18 ~~E. When proceeding under subparagraph b of paragraph 1 of~~  
19 ~~subsection B or subsection C of this section with respect to any~~  
20 ~~policy or contract carrying guaranteed minimum interest rates, the~~  
21 ~~Association shall assure the payment or crediting of a rate of~~  
22 ~~interest consistent with subparagraph c of paragraph 2 of subsection~~  
23 ~~B of Section 2025 of the Insurance Code.~~

24

1        ~~F.~~ C. Nonpayment of premiums within thirty-one (31) days after  
2 the date required under the terms of any guaranteed, assumed,  
3 alternative or reissued policy or contract or substitute coverage  
4 shall terminate the Association's obligations under ~~such~~ the policy  
5 or coverage under ~~this act~~ the Oklahoma Life and Health Insurance  
6 Guaranty Association Act with respect to ~~such~~ the policy or  
7 coverage, except with respect to any claims incurred or any net cash  
8 surrender value which may be due in accordance with the provisions  
9 of this act.

10        ~~G.~~ D. Premiums due for coverage after entry of an order of  
11 liquidation of an insolvent insurer shall belong to and be payable  
12 at the direction of the Association, ~~and the~~. If the liquidator of  
13 an insolvent insurer requests, the Association shall provide a  
14 report to the liquidator regarding the premium collected by the  
15 Association. The Association shall be liable for unearned premiums  
16 due to policy or contract owners arising after the entry of ~~such~~ the  
17 order.

18        ~~H.~~ E. The protection provided by ~~this act~~ the Oklahoma Life and  
19 Health Insurance Guaranty Association Act shall not apply where any  
20 guaranty protection is provided to residents of this state by the  
21 laws of the domiciliary state or jurisdiction of the impaired or  
22 insolvent insurer other than this state.

23  
24

1 ~~I- F.~~ F. In carrying out its duties under ~~subsections~~ subsection B  
2 ~~and C~~ of this section the Association may, subject to approval by  
3 ~~the~~ a court in this state:

4 1. ~~impose~~ Impose permanent policy or contract liens in  
5 connection with ~~any~~ a guarantee, assumption or reinsurance  
6 agreement, if the Association finds that the amounts which can be  
7 assessed under this act are less than the amounts needed to assure  
8 full and prompt performance of the ~~Association's~~ duties of the  
9 Association under this act the Oklahoma Life and Health Guaranty  
10 Insurance Association Act, or that the economic or financial  
11 conditions as they affect member insurers are sufficiently adverse  
12 to render the imposition of ~~such~~ permanent policy or contract liens,  
13 to be in the public interest; and

14 2. ~~impose~~ Impose temporary moratoriums or liens on payments of  
15 cash values and policy loans, or any other right to withdraw funds  
16 held in conjunction with policies or contracts, in addition to any  
17 contractual provisions for deferral of cash or policy loan value.  
18 In addition, in the event of a temporary moratorium or moratorium  
19 charge imposed by the receivership court on payment of cash values  
20 or policy loans, or on any other right to withdraw funds held in  
21 conjunction with policies or contracts, out of the assets of the  
22 impaired or insolvent insurer, the Association may defer the payment  
23 of cash values, policy loans or other rights by the Association for  
24 the period of the moratorium or moratorium charge imposed by the

1 receivership court, except for claims covered by the Association to  
2 be paid in accordance with a hardship procedure established by the  
3 liquidator or rehabilitator and approved by the receivership court.

4 G. A deposit in this state, held pursuant to law or required by  
5 the Commissioner for the benefit of creditors, including but not  
6 limited to policy owners, not turned over to the domiciliary  
7 liquidator upon the entry of a final order of liquidation or order  
8 approving a rehabilitation plan of an insurer domiciled in this  
9 state or in a reciprocal state, shall be promptly paid by the  
10 Association. The Association shall be entitled to retain a portion  
11 of any amount so paid to it equal to the percentage determined by  
12 dividing the aggregate amount of policy owners claims related to  
13 that insolvency for which the Association has provided statutory  
14 benefits by the aggregate amount of all claims by the policy owners  
15 in this state related to that insolvency and shall remit to the  
16 domiciliary receiver the amount so paid to the Association less the  
17 amount retained pursuant to this subsection. Any amount so paid to  
18 the Association and retained by it shall be treated as a  
19 distribution of estate assets pursuant to applicable state  
20 receivership laws dealing with early access disbursements.

21 J. H. If the Association fails to act within a reasonable  
22 period of time with respect to an insolvent insurer, as provided in  
23 subsections ~~subsection B, C and D~~ of this section, the Commissioner  
24 shall have the powers and duties of the Association under ~~this act~~

1 the Oklahoma Life and Health Insurance Guaranty Association Act with  
2 respect to ~~impaired or the insolvent insurers~~ insurer;

3 ~~K.~~ I. The Association may render assistance and advice to the  
4 Commissioner, upon ~~his~~ the request of the Commissioner, concerning  
5 rehabilitation, payment of claims, continuance of coverage, or the  
6 performance of other contractual obligations of ~~any~~ an impaired or  
7 insolvent insurer;

8 ~~L.~~ J. The Association shall have standing to appear or  
9 intervene before ~~any~~ a court or agency in this state which has  
10 jurisdiction over an impaired or insolvent insurer concerning which  
11 the Association is or may become obligated under ~~this act~~ the  
12 Oklahoma Life and Health Guaranty Insurance Association Act or with  
13 jurisdiction over any person or property against which the  
14 Association may have rights through subrogation or otherwise. ~~Such~~  
15 ~~standing~~ Standing shall extend to all matters germane to the powers  
16 and duties of the Association including, but not limited to,  
17 proposals for reinsuring, modifying or guaranteeing the policies or  
18 contracts of the impaired or insolvent insurer and the determination  
19 of the policies or contracts and contractual obligations. The  
20 Association shall also have the right to appear or intervene before  
21 a court or agency in another state with jurisdiction over an  
22 impaired or insolvent insurer for which the Association is or may  
23 become obligated or with jurisdiction over a ~~third party~~ any person

24

1 or property against whom the Association may have rights through  
2 subrogation ~~of the insurer's policyholders;~~ or otherwise.

3 ~~M.~~ K. 1. Any person receiving benefits under ~~this act~~ the  
4 Oklahoma Life and Insurance Health Insurance Association Act shall  
5 be deemed to have assigned ~~to the Association~~ the rights under, and  
6 any causes of action against any person for losses arising under,  
7 resulting from or otherwise relating to, the covered policy or  
8 contract to the Association to the extent of the benefits received  
9 because of this act, whether the benefits are payments of or on  
10 account of contractual obligations, continuation of coverage or  
11 provision of substitute or alternative coverages. The Association  
12 may require an assignment to it of ~~such~~ the rights and cause of  
13 action by any payee, policy or contract owner, beneficiary, insured  
14 or annuitant as a condition precedent to the receipt of any rights  
15 or benefits conferred by this act upon ~~such~~ the person.

16 2. The subrogation rights of the Association under this  
17 subsection shall have the same priority against the assets of the  
18 impaired or insolvent insurer as that possessed by the person  
19 entitled to receive benefits under ~~this act~~ the Oklahoma Life and  
20 Health Insurance Guaranty Association Act.

21 3. ~~The~~ In addition to paragraphs 1 and 2 of this subsection,  
22 the Association shall have all common law rights of subrogation and  
23 any other equitable or legal remedy ~~which~~ that would have been  
24 available to the impaired or insolvent insurer or ~~holder~~ owner,

1 beneficiary or payee of a policy or contract with respect to such  
2 the policy or contracts, including without limitation, in the case  
3 of a structured settlement annuity, any rights of the owner,  
4 beneficiary or payee of the annuity, to the extent of benefits  
5 received pursuant to the Oklahoma Life and Health Insurance Guaranty  
6 Association Act, against a person originally or by succession  
7 responsible for the losses arising from the personal injury relating  
8 to the annuity or payment therefore, excepting any person  
9 responsible solely by reason of serving as an assignee in respect of  
10 a qualified assignment under Internal Revenue Code Section 130.

11 4. If paragraphs 1 through 3 of this subsection are invalid or  
12 ineffective with respect to any person or claim for any reason, the  
13 amount payable by the Association with respect to the related  
14 covered obligations shall be reduced by the amount realized by any  
15 other person with respect to the person or claim that is  
16 attributable to the policies, or portion thereof, covered by the  
17 Association.

18 5. If the Association has provided benefits with respect to a  
19 covered obligation and a person recovers amounts as to which the  
20 Association has rights as described in paragraphs 1 through 4 of  
21 this subsection, the person shall pay to the Association the portion  
22 of the recovery attributable to the policies, or portion thereof,  
23 covered by the Association.

24

1       L. In addition to the rights and powers specified in the  
2 Oklahoma Life and Health Insurance Guaranty Association Act, the  
3 Association may:

4           1. Enter into contracts as are necessary or proper to carry out  
5 the provisions and purposes of the Oklahoma Life and Health  
6 Insurance Guaranty Association Act;

7           2. Sue or be sued, including, but not limited to, taking any  
8 legal actions necessary or proper to recover any unpaid assessments  
9 under Section 2030 of this title and to settle claims or potential  
10 claims against it;

11           3. Borrow money to effect the purposes of the Oklahoma Life and  
12 Health Insurance Guaranty Association Act. Any notes or other  
13 evidence of indebtedness of the Association not in default shall be  
14 legal investments for domestic insurers and may be carried as  
15 admitted assets;

16           4. Employ or retain persons as are necessary or appropriate to  
17 handle the financial transactions of the Association, and to perform  
18 other functions as become necessary or proper under the Oklahoma  
19 Life and Health Insurance Guaranty Association Act;

20           5. Take any legal action as may be necessary or appropriate to  
21 avoid or recover payment of improper claims;

22           6. Exercise, for the purposes of the Oklahoma Life and Health  
23 Insurance Guaranty Association Act and to the extent approved by the  
24 Commissioner, the powers of a domestic life or health insurer, but

1 in no case may the Association issue insurance policies or annuity  
2 contracts other than those issued to perform its obligations under  
3 the Oklahoma Life and Health Insurance Guaranty Association Act;

4 7. Organize itself as a corporation or in other legal form  
5 permitted by the laws of the state;

6 8. Request information from a person seeking coverage from the  
7 Association in order to aid the Association in determining its  
8 obligations under the Oklahoma Life and Health Insurance Guaranty  
9 Association Act with respect to the person, and the person shall  
10 promptly comply with the request; and

11 9. Take other necessary or appropriate action to discharge its  
12 duties and obligations under the Oklahoma Life and Health Insurance  
13 Guaranty Association Act or to exercise its powers under the  
14 Oklahoma Life and Health Insurance Guaranty Association Act.

15 M. The Association may join an organization of one or more  
16 other state associations of similar purposes, to further the  
17 purposes and administer the powers and duties of the Association.

18 N. 1. a. At any time within one hundred eighty (180) days of  
19 the date of the order of liquidation, the Association  
20 may elect to succeed to the rights and obligations of  
21 the ceding member insurer that relate to policies or  
22 annuities covered, in whole or in part, by the  
23 Association, in each case under any one or more  
24 reinsurance contracts entered into by the insolvent

1 insurer and its reinsurers and selected by the  
2 Association. Any assumption shall be effective as of  
3 the date of the order of liquidation. The election  
4 shall be effected by the Association or the National  
5 Organization of Life and Health Insurance Guaranty  
6 Associations (NOLHGA) on its behalf sending written  
7 notice, return receipt requested, to the affected  
8 reinsurers.

9 b. To facilitate the earliest practicable decision about  
10 whether to assume any of the contracts of reinsurance,  
11 and in order to protect the financial position of the  
12 estate, the receiver and each reinsurer of the ceding  
13 member insurer shall make available upon request to  
14 the Association or to NOLHGA on its behalf as soon as  
15 possible after commencement of formal delinquency  
16 proceedings, copies of in-force contracts of  
17 reinsurance and all related files and records relevant  
18 to the determination of whether the contracts should  
19 be assumed, and notices of any defaults under the  
20 reinsurance contracts or any known event or condition  
21 which with the passage of time could become a default  
22 under the reinsurance contracts.

1        c. The requirements provided in this subparagraph shall  
2        apply to reinsurance contracts assumed by the  
3        Association:

4        (1) the Association shall be responsible for all  
5        unpaid premiums due under the reinsurance  
6        contracts for periods both before and after the  
7        date of the order of liquidation, and shall be  
8        responsible for the performance of all other  
9        obligations to be performed after the date of the  
10       order of liquidation, in each case which relate  
11       to policies or annuities covered, in whole or in  
12       part, by the Association. The Association may  
13       charge policies or annuities covered in part by  
14       the Association, through reasonable allocation  
15       methods, the costs for reinsurance in excess of  
16       the obligations of the Association and shall  
17       provide notice and an accounting of these charges  
18       to the liquidator,

19       (2) the Association shall be entitled to any amounts  
20       payable by the reinsurer under the reinsurance  
21       contracts with respect to losses or events that  
22       occur in periods after the date of the order of  
23       liquidation and that relate to policies or  
24       annuities covered, in whole or in part, by the

1 Association, provided that, upon receipt of any  
2 of these amounts, the Association shall be  
3 obliged to pay to the beneficiary under the  
4 policy or annuity on account of which the amounts  
5 were paid a portion of the amount equal to the  
6 lesser of:

7 (a) the amount received by the Association; or

8 (b) the excess of the amount received by the

9 Association over the amount equal to the

10 benefits paid by the Association on account

11 of the policy or annuity less the retention

12 of the insurer applicable to the loss or

13 event,

14 (3) within thirty (30) days following the election  
15 date of the Association, the Association and each  
16 reinsurer under contracts assumed by the  
17 Association shall calculate the net balance due  
18 to or from the Association under each reinsurance  
19 contract as of the election date with respect to  
20 policies or annuities covered, in whole or in  
21 part, by the Association, which calculation shall  
22 give full credit to all items paid by either the  
23 insurer or its receiver or the reinsurer prior to  
24 the election date. The reinsurer shall pay the

1 receiver any amounts due for losses or events  
2 prior to the date of the order of liquidation,  
3 subject to any set-off for premiums unpaid for  
4 periods prior to the date, and the Association or  
5 reinsurer shall pay any remaining balance due the  
6 other, in each case within five (5) days of the  
7 completion of the aforementioned calculation. Any  
8 disputes over the amounts due to either the  
9 Association or the reinsurer shall be resolved by  
10 arbitration pursuant to the terms of the affected  
11 reinsurance contracts or, if the contract  
12 contains no arbitration clause, as otherwise  
13 provided by law. If the receiver has received any  
14 amounts due the Association pursuant to division  
15 (2) of this subparagraph, the receiver shall  
16 remit the same to the Association as promptly as  
17 practicable, and

18 (4) if the Association or receiver, on the behalf of  
19 the Association, within sixty (60) days of the  
20 election date, pays the unpaid premiums due for  
21 periods both before and after the election date  
22 that relate to policies or annuities covered, in  
23 whole or in part, by the Association, the  
24 reinsurer shall not be entitled to terminate the

1                   reinsurance contracts for failure to pay the  
2                   premium insofar as the reinsurance contracts  
3                   relate to policies or annuities covered, in whole  
4                   or in part, by the Association, and shall not be  
5                   entitled to set off any unpaid amounts due under  
6                   other contracts, or unpaid amounts due from  
7                   parties other than the Association, against  
8                   amounts due the Association.

9           2. During the period from the date of the order of liquidation  
10 until the election date, or if the election date does not occur,  
11 until one hundred eighty (180) days after the date of the order of  
12 liquidation:

13           a. (1) neither the Association nor the reinsurer shall  
14           have any rights or obligations under reinsurance  
15           contracts that the Association has the right to  
16           assume under paragraph 1 of this subsection,  
17           whether for periods prior to or after the date of  
18           the order of liquidation, and

19           (2) the reinsurer, the receiver and the Association  
20           shall, to the extent practicable, provide each  
21           other data and records reasonably requested.

22           b. Provided that once the Association has elected to  
23           assume a reinsurance contract, the rights and  
24

1 obligations of the parties shall be governed by  
2 paragraph 1 of this subsection.

3 3. If the Association does not elect to assume a reinsurance  
4 contract by the election date pursuant to paragraph 1 of this  
5 subsection, the Association shall have no rights or obligations, in  
6 each case for periods both before and after the date of the order of  
7 liquidation, with respect to the reinsurance contract.

8 4. When policies or annuities, or covered obligations with  
9 respect thereto, are transferred to an assuming insurer, reinsurance  
10 on the policies or annuities may also be transferred by the  
11 Association, in the case of contracts assumed under paragraph 1 of  
12 this subsection, subject to the following:

13 a. unless the reinsurer and the assuming insurer agree  
14 otherwise, the reinsurance contract transferred shall  
15 not cover any new policies of insurance or annuities  
16 in addition to those transferred,

17 b. the obligations described in paragraph 1 of this  
18 subsection shall no longer apply with respect to  
19 matters arising after the effective date of the  
20 transfer, and

21 c. notice shall be given in writing, return receipt  
22 requested, by the transferring party to the affected  
23 reinsurer not less than thirty (30) days prior to the  
24 effective date of the transfer.

1       5. The provisions of this subsection shall govern any affected  
2 reinsurance contract that provides for or requires any payment of  
3 reinsurance proceeds, on account of losses or events that occur in  
4 periods after the date of the order of liquidation, to the receiver  
5 of the insolvent insurer or any other person. The receiver shall  
6 remain entitled to any amounts payable by the reinsurer under the  
7 reinsurance contracts with respect to losses or events that occur in  
8 periods prior to the date of the order of liquidation, subject to  
9 applicable setoff provisions.

10       6. Except as otherwise provided in this section, nothing in  
11 this subsection shall alter or modify the terms and conditions of  
12 any reinsurance contract. Nothing in this section shall abrogate or  
13 limit any rights of any reinsurer to claim that it is entitled to  
14 rescind a reinsurance contract. Nothing in this section shall give  
15 a policyholder or beneficiary an independent cause of action against  
16 a reinsurer that is not otherwise set forth in the reinsurance  
17 contract. Nothing in this section shall limit or affect the rights  
18 of the Association as a creditor of the estate against the assets of  
19 the state. Nothing in this section shall apply to reinsurance  
20 agreements covering property or casualty risks.

21       0. The Board of Directors of the Association shall have  
22 discretion and may exercise reasonable business judgment to  
23 determine the means by which the Association is to provide the  
24

1 benefits of the Oklahoma Life and Health Insurance Guaranty  
2 Association Act in an economical and efficient manner.

3 P. Where the Association has arranged or offered to provide the  
4 benefits of the Oklahoma Life and Health Insurance Guaranty  
5 Association Act to a covered person under a plan or arrangement that  
6 fulfills the obligations of the Association under the Oklahoma Life  
7 and Health Insurance Guaranty Association Act, the person shall not  
8 be entitled to benefits from the Association in addition to or other  
9 than those provided under the plan or arrangement.

10 Q. Venue in a suit against the Association arising under the  
11 Oklahoma Life and Health Insurance Guaranty Association Act shall be  
12 in Oklahoma County. The Association shall not be required to give  
13 an appeal bond in an appeal that relates to a cause of action  
14 arising under the Oklahoma Life and Health Insurance Guaranty  
15 Association Act.

16 R. In carrying out its duties in connection with guaranteeing,  
17 assuming or reinsuring policies or contracts under subsection A or B  
18 of this section, the Association may, subject to approval of the  
19 receivership court, issue substitute coverage for a policy or  
20 contract that provides an interest rate, crediting rate or similar  
21 factor determined by use of an index or other external reference  
22 stated in the policy or contract employed in calculating returns or  
23 changes in value by issuing an alternative policy or contract in  
24 accordance with the following provisions:

1        1. In lieu of the index or other external reference provided  
2 for in the original policy or contract, the alternative policy or  
3 contract provides for:

- 4            a. a fixed interest rate,
- 5            b. payment of dividends with minimum guarantees, or
- 6            c. a different method for calculating interest or changes  
7            in value;

8        2. There is no requirement for evidence of insurability,  
9 waiting period or other exclusion that would not have applied under  
10 the replaced policy or contract; and

11        3. The alternative policy or contract is substantially similar  
12 to the replaced policy or contract in all other material terms.

13        SECTION 4.        AMENDATORY        36 O.S. 2001, Section 2032, is  
14 amended to read as follows:

15        Section 2032. A. To aid in the detection and prevention of  
16 insurer insolvencies, it shall be the duty of the Commissioner:

17        1. To notify ~~his counterpart~~ in the commissioners of all of the  
18 other states, territories of the United States and the District of  
19 Columbia within thirty (30) days following the action taken or the  
20 date the action occurs, when ~~he~~ the Commissioner takes any of the  
21 following actions against a member insurer:

- 22            a. revocation of license,
- 23            b. suspension of license, or

1 c. makes ~~any~~ a formal order that ~~such~~ the company  
2 restrict its premium writing, obtain additional  
3 contributions to surplus, withdraw from the state,  
4 reinsure all or any part of its business, or increase  
5 capital, surplus or any other account for the security  
6 of ~~policyholders~~ policy owners or creditors-

7 ~~Such notice shall be mailed to all counterparts of the Commissioner~~  
8 ~~within thirty (30) days following the action or the date on which~~  
9 ~~such action occurs;~~

10 2. To report to the ~~Board~~ board of directors when ~~he~~ the  
11 Commissioner has taken any of the actions set forth in paragraph 1  
12 of this subsection or has received a report from any other ~~state~~  
13 commissioner of other states indicating that any ~~such~~ action has  
14 been taken in another state. ~~Such~~ The report to the ~~Board~~ board of  
15 directors shall contain all significant details of the action taken  
16 or the report received from a commissioner from another state;

17 3. To report to the ~~Board~~ board when ~~he~~ the Commissioner has  
18 reasonable cause to believe from ~~any~~ an examination, whether  
19 completed or in process, of any member ~~company, that such company~~  
20 insurer that the insurer may be an impaired or insolvent insurer;

21 4. To furnish to the ~~Board~~ information, if available, which is  
22 ~~contained in the Early Warning Tests developed by the National~~  
23 ~~Association of Insurance Commissioners~~ board of directors the  
24 National Association of Insurance Commissioners (NAIC) Insurance

1 Regulatory Information System (IRIS) ratios and listings of  
2 companies not included in the ratios developed by the NAIC, and  
3 board may use the information contained therein in carrying out its  
4 duties and responsibilities under this section. The report and the  
5 information contained therein shall be kept confidential by the  
6 board of directors until a time as made public by the Commissioner  
7 or other lawful authority.

8 B. The Commissioner may seek the advice and recommendations of  
9 the ~~Board~~ board of directors concerning any matter affecting ~~his~~ the  
10 duties and responsibilities of the Commissioner regarding the  
11 financial condition of member insurers and companies ~~and companies~~  
12 seeking admission to transact insurance business in this state.

13 C. The board of directors may, upon majority vote, make reports  
14 and recommendations to the Commissioner upon any matter germane to  
15 the solvency, liquidation, rehabilitation or conservation of any  
16 member insurer or germane to the solvency of any company seeking to  
17 do an insurance business in this state. The reports and  
18 recommendations shall not be considered public documents.

19 D. The board of directors may, upon majority vote, notify the  
20 Commissioner of any information indicating a member insurer may be  
21 an impaired or insolvent insurer.

22 E. The board of directors may, upon majority vote, make  
23 recommendations to the Commissioner for the detection and prevention  
24 of insurer insolvencies.

1 SECTION 5. AMENDATORY 36 O.S. 2001, Section 2036, is  
2 amended to read as follows:

3 Section 2036. A. For the purpose of carrying out its  
4 obligations under ~~this act~~ the Oklahoma Life and Health Insurance  
5 Guaranty Association Act, the Oklahoma Life and Health Insurance  
6 Guaranty Association shall be deemed to be a creditor of the  
7 impaired or insolvent insurer to the extent of assets attributable  
8 to covered policies reduced by any amounts to which the Association  
9 is entitled as subrogee pursuant to paragraph 8 of Section ~~&~~ 2028 of  
10 ~~this act~~ title. ~~All assets~~ Assets of the impaired or insolvent  
11 insurer attributable to covered policies shall be used to continue  
12 all covered policies and pay all contractual obligations of the  
13 impaired or insolvent insurer as required by ~~this act~~ the Oklahoma  
14 Life and Health Insurance Guaranty Association Act. Assets  
15 attributable to covered policies, as used in this subsection, are  
16 that proportion of the assets ~~which~~ that the reserves which should  
17 have been established for such policies, bear to the reserves which  
18 should have been established for all policies of insurance written  
19 by the impaired or insolvent insurer.

20 B. As a creditor of the impaired or insolvent insurer as  
21 established in subsection A of this section and consistent with  
22 Section 1927.1 of this title, the Association and other similar  
23 associations shall be entitled to receive a disbursement of assets  
24 out of the marshaled assets, from time to time as the assets become

1 available to reimburse it, as a credit against contractual  
2 obligations under this act. If the liquidator has not, within one  
3 hundred twenty (120) days of a final determination of insolvency of  
4 an insurer by the receivership court, made an application to the  
5 court for the approval of a proposal to disburse assets out of  
6 marshaled assets to guaranty associations having obligations because  
7 of the insolvency, then the Association shall be entitled to make  
8 application to the receivership court for approval of its own  
9 proposal to disburse these assets.

10 SECTION 6. AMENDATORY 36 O.S. 2001, Section 2042, is  
11 amended to read as follows:

12 Section 2042. All proceedings in which the insolvent insurer is  
13 a party in any court in this state shall be stayed ~~sixty (60)~~ one  
14 hundred eighty (180) days from the date an order of liquidation,  
15 rehabilitation, ~~receivership~~ or ~~conservatorship~~ conservation is  
16 final to permit proper legal action by the Oklahoma Life and Health  
17 Insurance Guaranty Association on any matters germane to its powers  
18 or duties. As to judgment under any decision, order, verdict or  
19 finding based on default, the Association may apply to have ~~such~~ the  
20 judgment set aside by the same court that made ~~such~~ the judgment and  
21 shall be permitted to defend against ~~such~~ the suit on the merits.

22 SECTION 7. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 2044 of Title 36, unless there  
24 is created a duplication in numbering, reads as follows:

1 None of the amendatory provisions contained herein shall apply  
2 to any member insurer that is impaired or insolvent on the date such  
3 amendments become effective.

4 SECTION 8. REPEALER 36 O.S. 2001, Sections 2029 and  
5 2033, are hereby repealed.

6 SECTION 9. This act shall become effective November 1, 2010.

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