

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 2043

By: Brown of the Senate

and

(Sullivan) of the House

6
7
8
9 COMMITTEE SUBSTITUTE

10 [insurance - Oklahoma Life and Health Insurance
11 Guaranty Association Act - codification - effective
12 date]

13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

17 Section 2024. As used in ~~Section~~ Sections 2021 ~~et seq.~~ through
18 2043 of this title:

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

21 2. "Association" means the Oklahoma Life and Health Insurance
22 Guaranty Association created in Section 2023 of ~~the Insurance Code~~
23 this title;

1 3. ~~"Board" means Board of Directors of the Oklahoma Life and~~
2 ~~Health Insurance Guaranty Association~~ "Commissioner" means the
3 Oklahoma Insurance Commissioner;

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

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

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

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

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

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

20 ~~7.~~ 8. "Insolvent insurer" means a member insurer which, after
21 the effective date of this act, is placed under an order of
22 liquidation by a court of competent jurisdiction with a finding of
23 insolvency;

1 ~~8.~~ 9. "Member insurer" means any nonprofit hospital service and
2 medical indemnity corporation and any insurer licensed or ~~which~~ that
3 holds a certificate of authority to transact in this state any kind
4 of insurance for which coverage is provided under Section 2025 of
5 ~~the Insurance Code~~ this title, and includes any insurer whose
6 license or certificate of authority in this state may have been
7 suspended, revoked, not renewed or voluntarily withdrawn, but does
8 not include:

- 9 a. ~~A~~ a health maintenance organization~~,~~,
- 10 b. ~~A~~ a fraternal benefit society~~,~~,
- 11 c. ~~A~~ a mandatory state-pooling plan~~,~~,
- 12 d. ~~A~~ a mutual assessment company or ~~any entity~~ other
13 person that operates on an assessment basis~~,~~,
- 14 e. ~~An~~ an insurance exchange~~,~~,
- 15 f. ~~Any~~ an organization that has a certificate or license
16 limited to the issuance of charitable gift annuities
17 under Sections 4071 through 4082 of this title, or
18 g. any entity similar to any of the above;

19 ~~9.~~ 10. "Moody's Corporate Bond Yield Average" means the Monthly
20 Average Corporates as published by Moody's Investors Service, Inc.,
21 or any successor thereto;

22 ~~10.~~ 11. "Owner, "policy owner" or "contract owner" means the
23 person who is identified as the legal owner of a policy or contract
24 under the terms of the policy or contract or who is otherwise vested

1 with legal title to the policy or contract through a valid
2 assignment completed in accordance with the terms of the policy or
3 contract and properly recorded as the owner on the books of the
4 insurer. Owner, policy owner or contract owner does not include
5 persons with a mere beneficial interest in a policy or contract;

6 12. "Person" means any an individual, corporation, limited
7 liability company, partnership, association, governmental body or
8 entity, or voluntary organization;

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

13 "Premiums" does not include ~~any~~ amounts or considerations received
14 for ~~any~~ policies or contracts or for the portions of any policies or
15 contracts for which coverage is not provided under subsection B of
16 Section 2025 of ~~the Insurance Code~~ this title except that assessable
17 premium shall not be reduced on account of subparagraph (c) of
18 paragraph 2 of subsection B of Section 2025 of this title relating
19 to interest limitations and paragraph 2 of subsection C of Section
20 2025 of this title relating to limitations with respect to ~~any~~ one
21 life individual, one participant and one contract owner. Premiums
22 does not include:

23 a. premiums on an unallocated annuity contract, or
24

1 b. premiums in excess of Five Million Dollars
2 (\$5,000,000.00) on multiple non-group policies of life
3 insurance owned by one owner, whether the policy owner
4 is an individual, firm, corporation, or other person,
5 and whether the persons insured are officers,
6 managers, employees or other persons, regardless of
7 the number of policies or contracts held by the owner;

8 14. "Principal place of business" of a person other than a
9 natural person means the single state in which the natural persons
10 who establish policy for the direction, control and coordination of
11 the operations of the entity as a whole primarily exercise that
12 function, determined by the Association in its reasonable judgment
13 by considering the following factors:

- 14 a. the state in which the primary executive and
15 administrative headquarters of the entity are located,
16 b. the state in which the principal office of the chief
17 executive officer of the entity is located,
18 c. the state in which the board of directors or similar
19 governing person or persons of the entity conducts the
20 majority of its meetings,
21 d. the state in which the executive or management
22 committee of the board of directors or similar
23 governing person or persons of the entity conducts the
24 majority of its meetings,

1 e. the state from which the management of the overall
2 operations of the entity is directed, and

3 f. in the case of a benefit plan sponsored by affiliated
4 companies comprising a consolidated corporation, the
5 state in which the holding company or controlling
6 affiliate has its principal place of business as
7 determined using the factors listed in subparagraphs a
8 through e of this paragraph;

9 15. "Receivership court" means the court in the insolvent or
10 impaired state of the insurer having jurisdiction over the
11 conservation, rehabilitation or liquidation of the insurer;

12 ~~12.~~ 16. "Resident" means any a person to whom a contractual
13 obligation is owed and who resides in this state at the time a
14 ~~member insurer is determined to be an impaired or insolvent insurer~~
15 ~~and to whom a contractual obligation is owed~~ on the date of entry of
16 a court order that determines a member insurer to be an impaired
17 insurer or a court order that determines a member insurer to be an
18 insolvent insurer. A person may be a resident of only one state,
19 which in the case of a person other than a natural person shall be
20 its principal place of business. Citizens of the United States that
21 are either residents of foreign countries or residents of the United
22 States possessions, territories or protectorates that do not have an
23 association similar to the Association created by the Oklahoma Life
24 and Health Insurance Guaranty Association Act, shall be deemed

1 residents of the state of domicile of the insurer that issued the
2 policy or contract; and

3 ~~13.~~ 17. "State" means a state of the United States, the
4 district of Columbia, Puerto Rico, or a United States possession,
5 territory or protectorate;

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

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

13 20. "Unallocated annuity contract" means an annuity contract or
14 group annuity certificate which is not issued to and owned by an
15 individual, except to the extent of any annuity benefits guaranteed
16 to an individual by an insurer under the contract or certificate.

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

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

22 1. a. ~~to~~ To persons, who regardless of where they reside,
23 except for nonresident certificate holders under group
24 policies or contracts, are the beneficiaries,

1 assignees or payees of the persons covered under
2 subparagraph b of this paragraph,

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

6 ~~a.~~

7 (1) are residents, or

8 ~~b.~~

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

11 ~~(1)~~

12 (a) ~~the insurers which~~ insurer that issued ~~such~~
13 the policies or contracts are domiciled in
14 this state,

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

18 ~~(3) such~~

19 (b) the states in which the persons reside have
20 associations similar to the Oklahoma Life
21 and Health Insurance Guaranty Association
22 created by this act, and

23 ~~(4) such the persons are not eligible for coverage by~~
24 ~~such other states' associations an association in~~

1 any other state due to the fact that the insurer
2 was not licensed in the state at the time
3 specified in the guaranty association law of the
4 state; and

5 2. ~~to persons who, regardless of where they reside, are the~~
6 ~~beneficiaries, assignees or payees of the persons covered under~~
7 ~~paragraph 1 of this subsection except for nonresident certificate~~
8 ~~holders under group policies or contracts~~ Subparagraphs a and b of
9 paragraph 1 of this subsection shall not apply to structured
10 settlement annuities specified in subsection B of this section and
11 in the Oklahoma Life and Health Insurance Guaranty Association Act
12 shall, except as provided in paragraphs 3 and 4 of this subsection,
13 provide coverage to a person who is a payee under a structured
14 settlement annuity or a beneficiary of a payee if the payee is
15 deceased, if the payee:

16 a. is a resident, regardless of where the contract owner
17 resides, or

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

20 (1) (a) the contract owner of the structured
21 settlement annuity is a resident, or

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

1 Life and Health Insurance Guaranty Association Act. In determining
2 the application of the provisions of this paragraph to situations
3 where a person could be covered by the association of more than one
4 state, whether as an owner, payee, beneficiary or assignee, the
5 Oklahoma Life and Health Insurance Association Act shall be
6 construed in conjunction with the laws of other states to result in
7 coverage by only one association.

8 B. 1. ~~This act~~ The Oklahoma Life and Health Insurance Guaranty
9 Association Act shall provide coverage to the persons specified in
10 subsection A of this section for direct, ~~nongroup~~ nongroup life,
11 health, annuity and supplemental policies or contracts, and for
12 certificates under direct group policies and contracts, ~~issued by~~
13 ~~member insurers,~~ except as limited by ~~this act~~ the Oklahoma Life and
14 Health Insurance Guaranty Association Act. Annuity contracts and
15 certificates under group annuity contracts include allocated funding
16 agreements, structured settlement annuities and any immediate or
17 deferred annuity contracts.

18 2. This act shall not provide coverage for:

19 a. ~~any~~ a portion of a policy or contract not guaranteed
20 by the insurer, or under which the risk is borne by
21 the policy or contract ~~holder,~~ owner,

22 b. ~~any~~ a policy or contract of reinsurance, unless
23 assumption certificates have been issued, pursuant to
24 the reinsurance policy or contract,

1 c. ~~any~~ a portion of a policy or contract to the extent
2 that the rate of interest on which it is based, or the
3 interest rate, crediting rate or similar factor
4 determined by use of an index or other external
5 reference stated in the policy or contract employed in
6 calculating returns or changes in value:

7 (1) averaged over the period of four (4) years prior
8 to the date on which the Association becomes
9 obligated with respect to ~~such~~ the policy or
10 contract, exceeds a rate of interest determined
11 by subtracting two (2) percentage points from
12 Moody's Corporate Bond Yield Average averaged for
13 that same four-year period or for such lesser
14 period if the policy or contract was issued less
15 than four (4) years before the Association became
16 obligated, and

17 (2) on and after the date on which the Association
18 becomes obligated with respect to ~~such~~ the policy
19 or contract, exceeds the rate of interest
20 determined by subtracting three (3) percentage
21 points from Moody's Corporate Bond Yield Average
22 as most recently available⁷,

23 d. ~~any~~ a portion of a policy or contract issued to a plan
24 or program of an employer, association or similar

1 ~~entity~~ other person to provide life, health or annuity
2 benefits to its employees ~~or~~, members or others, to
3 the extent that ~~such~~ the plan or program is
4 self-funded or uninsured, including but not limited to
5 benefits payable by an employer, association or
6 ~~similar entity~~ other person under:

7 (1) a Multiple Employer Welfare Arrangement as
8 defined in ~~Section 514 of the Employee Retirement~~
9 ~~Income Security Act of 1974, as amended~~ 29 U.S.C.
10 Section 1144,

11 (2) a minimum premium group insurance plan,

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

13 (4) an administrative services only contract;

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

16 (1) dividends or experience rating credits, ~~or~~
17 ~~provides that~~

18 (2) voting rights, or

19 (3) payment of any fees or allowances ~~be paid~~ to any
20 person, including the policy or contract ~~holder~~
21 owner, in connection with the service to or
22 administration of ~~such~~ the policy or contract~~,~~

23 f. ~~any~~ a policy or contract issued in this state by a
24 member insurer at a time when it was not licensed or

1 did not have a certificate of authority to issue ~~such~~
2 the policy or contract in this state,

3 g. ~~any annuity contract or group annuity certificate~~
4 ~~which is not issued to and owned by an individual,~~
5 ~~except to the extent of any annuity benefits~~
6 ~~guaranteed to an individual by an insurer under such~~
7 ~~contract or certificate; and~~ a portion of a policy or
8 contract to the extent that the assessments required
9 by Section 2030 of this title with respect to the
10 policy or contract are preempted by federal or state
11 law,

12 h. ~~any policy or contract issued by those insurers~~
13 ~~enumerated in Section 110 of the Insurance Code~~ an
14 obligation that does not arise under the express
15 written terms of the policy or contract issued by the
16 insurer to the contract or policy owner, including
17 without limitation:

18 (1) claims based on marketing materials,

19 (2) claims based on side letters, riders or other

20 documents that were issued by the insurer without
21 meeting applicable policy form filing or approval
22 requirements,

23 (3) misrepresentations of or regarding policy
24 benefits,

1 (4) extra-contractual claims, or

2 (5) a claim for penalties or consequential or
3 incidental damages,

4 i. a contractual agreement that establishes the
5 obligations of the member insurer to provide a book
6 value accounting guaranty for defined contribution
7 benefit plan participants by reference to a portfolio
8 of assets that is owned by the benefit plan or its
9 trustee, which in each case is not an affiliate of the
10 member insurer,

11 j. an unallocated annuity contract,

12 k. a portion of a policy or contract to the extent it
13 provides for interest or other changes in value to be
14 determined by the use of an index or other external
15 reference stated in the policy or contract, but which
16 have not been credited to the policy or contract, or
17 as to which the policy or contract owner's rights are
18 subject to forfeiture, as of the date the member
19 insurer becomes an impaired or insolvent insurer under
20 the Oklahoma Life and Health Insurance Guaranty
21 Association Act, whichever is earlier. If a policy's
22 or contract's interest or changes in value are
23 credited less frequently than annually, then for
24 purposes of determining the values that have been

1 credited and are not subject to forfeiture under this
2 subparagraph, the interest or change in value
3 determined by using the procedures defined in the
4 policy or contract will be credited as if the
5 contractual date of crediting interest or changing
6 values was the date of impairment or insolvency,
7 whichever is earlier, and will not be subject to
8 forfeiture, or

9 1. a policy or contract providing any hospital, medical,
10 prescription drug or other health care benefits
11 pursuant to Part C or Part D of Subchapter XVIII,
12 Chapter 7 of Title 42 of the United States Code,
13 commonly known as Medicare Part C or Part D, or any
14 regulations issued pursuant thereto.

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

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

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

22 a.

23 (1) Three Hundred Thousand Dollars (\$300,000.00) in
24 life insurance death benefits, but not more than

1 One Hundred Thousand Dollars (\$100,000.00) in net
2 cash surrender and net cash withdrawal values for
3 life insurance,

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

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

10 (2) in health insurance benefits:

11 (a) One Hundred Thousand Dollars (\$100,000.00)
12 for coverages not defined as disability
13 insurance or basic hospital, medical and
14 surgical insurance or major medical
15 insurance or long-term care insurance as
16 defined in Section 4424 of this title,
17 including any net cash surrender and net
18 cash withdrawal values,

19 (b) Three Hundred Thousand Dollars (\$300,000.00)
20 for insurance providing income payments to
21 an insured wage earner when income is
22 interrupted or terminated because of
23 illness, sickness or accident, commonly
24 known as disability insurance and Three

1 Hundred Thousand Dollars (\$300,000.00) for
2 long-term care insurance as defined in
3 Section 4424 of this title, and

4 (c) Five Hundred Thousand Dollars (\$500,000.00)
5 for basic hospital, medical and surgical
6 insurance or insurance providing coverage in
7 excess of that provided by a basic hospital,
8 medical and surgical insurance, commonly
9 known as major medical insurance, or

10 (3) Three Hundred Thousand Dollars (\$300,000.00) in
11 the present value of annuity benefits, including
12 net cash surrender and net cash withdrawal
13 values, or

14 b. with respect to each payee of a structured settlement
15 annuity or beneficiary or beneficiaries of the payee
16 if the payee is deceased, Three Hundred Thousand
17 Dollars (\$300,000.00) in present value annuity
18 benefits, in the aggregate, including net cash
19 surrender and net cash withdrawal values,

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

22 (1) an aggregate of Three Hundred Thousand Dollars
23 (\$300,000.00) in the aggregate benefits with
24 respect to any one life under this subparagraph

1 and subparagraphs a~~7~~ and b and e of this
2 subparagraph paragraph except with respect to
3 benefits for basic hospital, medical and surgical
4 insurance and major medical insurance under
5 division (2) of subparagraph a of this paragraph,
6 in which case the aggregate liability of the
7 Association shall not exceed Five Hundred
8 Thousand Dollars (\$500,000.00) with respect to
9 any one individual, or

10 (2) with respect to one owner of multiple non-group
11 policies of life insurance, whether the policy
12 owner is an individual, firm, corporation or
13 other person, and whether the persons insured
14 are officers, managers, employees or other
15 persons, more than Five Million Dollars
16 (\$5,000,000.00) in benefits, regardless of the
17 number of policies and contracts held by the
18 owner,

19 d. the limitations set forth in this subsection are
20 limitations on benefits for which the Association is
21 obligated before taking into account either its
22 subrogation and assignment rights or the extent to
23 which those benefits could be provided out of the
24 assets of the impaired or insolvent insurer

1 attributable to covered policies. The costs of the
2 obligations of the Association under the Oklahoma Life
3 and Health Insurance Guaranty Association Act may be
4 met by the use of assets attributable to covered
5 policies or reimbursed to the Association pursuant to
6 its subrogation and assignment rights.

7 D. ~~The liability of the Association is strictly limited by the~~
8 ~~express terms of such covered policies and contracts and by the~~
9 ~~provisions of this act and is not affected by the contents of any~~
10 ~~brochures, illustrations, advertisements, or oral statements by~~
11 ~~agents, brokers or others used or made in connection with their~~
12 ~~sale. The Association is not liable for any extracontractual,~~
13 ~~exemplary or punitive damages, attorney's fees or interest other~~
14 ~~than as provided for by the terms of such policies or contracts, as~~
15 ~~limited by this act~~ In performing its obligations to provide
16 coverage under Section 2028 of this title, the Association shall not
17 be required to guarantee, assume, reinsure or perform, or cause to
18 be guaranteed, assumed, reinsured or performed, the contractual
19 obligations of the insolvent or impaired insurer under a covered
20 policy or contract that do not materially affect the economic values
21 or economic benefits of the covered policy or contract.

22 SECTION 3. AMENDATORY 36 O.S. 2001, Section 2028, is
23 amended to read as follows:
24

1 Section 2028. A. If a member insurer is an impaired ~~domestic~~
2 insurer, the Oklahoma Life and Health Insurance Guaranty Association
3 may, in its discretion, and subject to any conditions imposed by the
4 Association that do not impair the contractual obligations of the
5 impaired insurer, and that are approved by the Commissioner, ~~and~~
6 ~~that are, except in cases of court ordered conservation or~~
7 ~~rehabilitation, also approved by the impaired insurer:~~

8 1. guarantee Guarantee, assume or reinsure, or cause to be
9 guaranteed, assumed or reinsured, any or all of the policies or
10 contracts of the impaired insurer; or

11 2. ~~provide such~~ Provide monies, pledges, notes, guarantees or
12 other means as are proper to effectuate paragraph 1 of this
13 subsection, and assure payment of the contractual obligations of the
14 impaired insurer pending action under paragraph 1 of this
15 subsection; ~~or~~

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

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

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

24

1 ~~b. provide substitute benefits in lieu of the contractual~~
2 ~~obligations of the impaired insurer solely for: health~~
3 ~~claims; periodic annuity benefit payments; death~~
4 ~~benefits; supplemental benefits; and cash withdrawals~~
5 ~~for policy or contract owners who petition therefor~~
6 ~~under claims of emergency or hardship in accordance~~
7 ~~with standards proposed by the Association and~~
8 ~~approved by the Commissioner.~~

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

11 ~~a. the impaired insurer is a foreign or alien insurer:~~

12 ~~(1) which has been prohibited from soliciting or~~
13 ~~accepting new business in this state, and~~

14 ~~(2) whose certificate of authority has been suspended~~
15 ~~or revoked in this state, and~~

16 ~~(3) for which a petition for rehabilitation or~~
17 ~~liquidation has been filed in a court of~~
18 ~~competent jurisdiction in the insurer's state of~~
19 ~~domicile by the Insurance Commissioner of that~~
20 ~~state, and~~

21 ~~(4) the laws of the impaired insurer's state of~~
22 ~~domicile provide that until all payments of or on~~
23 ~~account of the impaired insurer's contractual~~
24 ~~obligations by all guaranty associations, along~~

1 with all expenses thereof and interest on all
2 such payments and expenses, shall have been
3 repaid to the guaranty associations or a plan of
4 repayment by the impaired insurer shall have been
5 approved by the guaranty associations, and
6 ~~(5) the delinquency proceeding shall not be~~
7 ~~dismissed, and~~
8 ~~(6) neither the impaired insurer nor its assets shall~~
9 ~~be returned to the control of its shareholders or~~
10 ~~private management, and~~
11 ~~(7) it shall not be permitted to solicit or accept~~
12 ~~new business or have any suspended or revoked~~
13 ~~license restored; or~~

14 ~~b. the impaired insurer is a domestic insurer which has~~
15 ~~been placed under an order of rehabilitation by a~~
16 ~~court of competent jurisdiction in this state.~~

17 ~~C. B.~~ If a member insurer is an insolvent insurer, the
18 Association shall, in its discretion, either:

19 1. a. (1) guarantee, assume or reinsure, or cause to be
20 guaranteed, assumed or reinsured, the policies or
21 contracts of the insolvent insurer₇, or

22 ~~2.~~

23 (2) assure payment of the contractual obligations of
24 the insolvent insurer₁, and

1 contracts for one (1) year, but in no event less
2 than thirty (30) days, from the date on which the
3 Association becomes obligated with respect to the
4 policies or contracts,

5 b. make diligent efforts to provide all known insureds or
6 annuitants for non-group policies and contracts, or
7 group policy owners with respect to group policies and
8 contracts, thirty (30) days' notice of the termination
9 of the benefits provided pursuant to subparagraph a of
10 this paragraph,

11 c. with respect to non-group life and health insurance
12 policies and annuities covered by the Association,
13 make available to each known insured or annuitant, or
14 owner if other than the insured or annuitant, and with
15 respect to an individual formerly insured or formerly
16 and annuitant under a group policy who is not eligible
17 for replacement group coverage, make available
18 substitute coverage on an individual basis in
19 accordance with the provisions of subparagraph d of
20 this paragraph, if the insureds or annuitants had a
21 right under law or the terminated policy or annuity to
22 convert coverage to individual coverage or to continue
23 an individual policy or annuity in force until a
24 specified age or for a specified time, during which

1 the insurer had no right unilaterally to make changes
2 in any provision of the policy or annuity or had a
3 right only to make changes in premium by class,

4 d. (1) in providing the substitute coverage required
5 under subparagraph c of this paragraph, the
6 Association may offer either to reissue the
7 terminated coverage or to issue an alternative
8 policy,

9 (2) alternative or reissued policies shall be offered
10 without requiring evidence of insurability, and
11 shall not provide for any waiting period or
12 exclusion that would not have applied under the
13 terminated policy, and

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

16 e. (1) alternative policies adopted by the Association
17 shall be subject to the approval of the
18 domiciliary insurance commissioner and the
19 receivership court. The Association may adopt
20 alternative policies of various types for future
21 issuance without regard to any particular
22 impairment or insolvency,

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

1 state and provide benefits that shall not be
2 unreasonable in relation to the premium charged.
3 The Association shall set the premium in
4 accordance with a table of rates that it shall
5 adopt. The premium shall reflect the amount of
6 insurance to be provided and the age and class of
7 risk of each insured, but shall not reflect any
8 changes in the health of the insured after the
9 original policy was last underwritten,

10 (3) any alternative policy issued by the Association
11 shall provide coverage of a type similar to that
12 of the policy issued by the impaired or insolvent
13 insurer, as determined by the Association,

14 f. if the Association elects to reissue terminated
15 coverage at a premium rate different from that charged
16 under the terminated policy, the premium shall be set
17 by the Association in accordance with the amount of
18 insurance provided and the age and class of risk,
19 subject to approval of the domiciliary insurance
20 commissioner and the receivership court,

21 g. the obligations of the Association with respect to
22 coverage under any policy of the impaired or insolvent
23 insurer or under any reissued or alternative policy
24 shall cease on the date the coverage or policy is

1 replaced by another similar policy by the policy
2 owner, the insured or the Association,

3 h. when proceeding under paragraph 2 of subsection B of
4 this section with respect to a policy or contract
5 carrying guaranteed minimum interest rates, the
6 Association shall assure the payment or crediting of a
7 rate of interest consistent with subparagraph c of
8 paragraph 2 of subsection B of Section 2025 of this
9 title.

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

13 ~~1. except for terms of conversion and renewability, assure~~
14 ~~payment of benefits for premiums identical to the premiums and~~
15 ~~benefits that would have been payable under the policies of the~~
16 ~~insolvent insurer, for claims incurred:~~

17 ~~a. with respect to group policies, not later than the~~
18 ~~earlier of the next renewal date under such policies~~
19 ~~or contracts or forty five (45) days, but in no event~~
20 ~~less than thirty (30) days, after the date on which~~
21 ~~the Association becomes obligated with respect to such~~
22 ~~policies,~~

23 ~~b. with respect to individual policies, not later than~~
24 ~~the earlier of the next renewal date, if any, under~~

1 ~~such policies or one (1) year, but in no event less~~
2 ~~than thirty (30) days, from the date on which the~~
3 ~~Association becomes obligated with respect to such~~
4 ~~policies;~~

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

8 ~~3. make available substitute coverage on an individual basis to~~
9 ~~each known insured, or owner if other than the insured, of an~~
10 ~~individual policy, and to any individual formerly insured under a~~
11 ~~group policy who is not eligible for replacement group coverage, if~~
12 ~~the insureds had a right under law or the terminated policy to~~
13 ~~convert coverage to individual coverage or to continue an individual~~
14 ~~policy in force until a specified age or for a specified time,~~
15 ~~during which the insurer had no right unilaterally to make changes~~
16 ~~in any provision of the policy or had a right only to make changes~~
17 ~~in premium by class. In providing said substitute coverage, the~~
18 ~~Association may offer either to reissue the terminated coverage or~~
19 ~~to issue an alternative policy.~~

20 ~~Alternative or reissued policies shall be offered without~~
21 ~~requiring evidence of insurability, and shall not provide for any~~
22 ~~waiting period or exclusion that would not have applied under the~~
23 ~~terminated policy. The Association may reinsure any alternative or~~
24 ~~reissued policy.~~

1 ~~Alternative policies adopted by the Association shall be subject~~
2 ~~to the approval of the Commissioner. The Association may adopt~~
3 ~~alternative policies of various types for future issuance without~~
4 ~~regard to any particular impairment or insolvency.~~

5 ~~Alternative policies shall contain at least the minimum~~
6 ~~statutory provisions required in this state and provide benefits~~
7 ~~that shall not be unreasonable in relation to the premium charged.~~
8 ~~The Association shall set the premium in accordance with a table of~~
9 ~~rates which it shall adopt. The premium shall reflect the amount of~~
10 ~~insurance to be provided and the age and class of risk of each~~
11 ~~insured, but shall not reflect any changes in the health of the~~
12 ~~insured after the original policy was last underwritten.~~

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

16 ~~If the Association elects to reissue terminated coverage at a~~
17 ~~premium rate different from that charged under the terminated~~
18 ~~policy, the premium shall be set by the Association in accordance~~
19 ~~with the amount of insurance provided and the age and class of risk,~~
20 ~~subject to approval of the Commissioner or by a court of competent~~
21 ~~jurisdiction.~~

22 ~~The Association's obligations with respect to coverage under any~~
23 ~~policy of the impaired or insolvent insurer or under any reissued or~~
24 ~~alternative policy shall cease on the date such coverage or policy~~

1 ~~is replaced by another similar policy by the policyholder, the~~
2 ~~insured or the Association.~~

3 ~~E. When proceeding under subparagraph b of paragraph 1 of~~
4 ~~subsection B or subsection C of this section with respect to any~~
5 ~~policy or contract carrying guaranteed minimum interest rates, the~~
6 ~~Association shall assure the payment or crediting of a rate of~~
7 ~~interest consistent with subparagraph c of paragraph 2 of subsection~~
8 ~~B of Section 2025 of the Insurance Code.~~

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

18 ~~G.~~ D. Premiums due for coverage after entry of an order of
19 liquidation of an insolvent insurer shall belong to and be payable
20 at the direction of the Association, ~~and the~~ . If the liquidator of
21 an insolvent insurer requests, the Association shall provide a
22 report to the liquidator regarding the premium collected by the
23 Association. The Association shall be liable for unearned premiums

24

1 due to policy or contract owners arising after the entry of ~~such~~ the
2 order.

3 ~~H.~~ E. The protection provided by ~~this act~~ the Oklahoma Life and
4 Health Insurance Guaranty Association Act shall not apply where any
5 guaranty protection is provided to residents of this state by the
6 laws of the domiciliary state or jurisdiction of the impaired or
7 insolvent insurer other than this state.

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

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

21 2. ~~impose~~ Impose temporary moratoriums or liens on payments of
22 cash values and policy loans, or any other right to withdraw funds
23 held in conjunction with policies or contracts, in addition to any
24 contractual provisions for deferral of cash or policy loan value.

1 In addition, in the event of a temporary moratorium or moratorium
2 charge imposed by the receivership court on payment of cash values
3 or policy loans, or on any other right to withdraw funds held in
4 conjunction with policies or contracts, out of the assets of the
5 impaired or insolvent insurer, the Association may defer the payment
6 of cash values, policy loans or other rights by the Association for
7 the period of the moratorium or moratorium charge imposed by the
8 receivership court, except for claims covered by the Association to
9 be paid in accordance with a hardship procedure established by the
10 liquidator or rehabilitator and approved by the receivership court.

11 G. A deposit in this state, held pursuant to law or required by
12 the Commissioner for the benefit of creditors, including but not
13 limited to policy owners, not turned over to the domiciliary
14 liquidator upon the entry of a final order of liquidation or order
15 approving a rehabilitation plan of an insurer domiciled in this
16 state or in a reciprocal state, shall be promptly paid by the
17 Association. The Association shall be entitled to retain a portion
18 of any amount so paid to it equal to the percentage determined by
19 dividing the aggregate amount of policy owners claims related to
20 that insolvency for which the Association has provided statutory
21 benefits by the aggregate amount of all claims by the policy owners
22 in this state related to that insolvency and shall remit to the
23 domiciliary receiver the amount so paid to the Association less the
24 amount retained pursuant to this subsection. Any amount so paid to

1 the Association and retained by it shall be treated as a
2 distribution of estate assets pursuant to applicable state
3 receivership laws dealing with early access disbursements.

4 ~~J.~~ H. If the Association fails to act within a reasonable
5 period of time with respect to an insolvent insurer, as provided in
6 ~~subsections~~ subsection B, C and D of this section, the Commissioner
7 shall have the powers and duties of the Association under ~~this act~~
8 the Oklahoma Life and Health Insurance Guaranty Association Act with
9 respect to ~~impaired or the insolvent insurers~~ insurer;

10 ~~K.~~ I. The Association may render assistance and advice to the
11 Commissioner, upon ~~his~~ the request of the Commissioner, concerning
12 rehabilitation, payment of claims, continuance of coverage, or the
13 performance of other contractual obligations of ~~any~~ an impaired or
14 insolvent insurer;

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

1 contracts of the impaired or insolvent insurer and the determination
2 of the policies or contracts and contractual obligations. The
3 Association shall also have the right to appear or intervene before
4 a court or agency in another state with jurisdiction over an
5 impaired or insolvent insurer for which the Association is or may
6 become obligated or with jurisdiction over a ~~third party~~ any person
7 or property against whom the Association may have rights through
8 subrogation ~~of the insurer's policyholders;~~ or otherwise.

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

22 2. The subrogation rights of the Association under this
23 subsection shall have the same priority against the assets of the
24 impaired or insolvent insurer as that possessed by the person

1 entitled to receive benefits under ~~this act~~ the Oklahoma Life and
2 Health Insurance Guaranty Association Act.

3 3. ~~The~~ In addition to paragraphs 1 and 2 of this subsection,
4 the Association shall have all common law rights of subrogation and
5 any other equitable or legal remedy ~~which~~ that would have been
6 available to the impaired or insolvent insurer or ~~holder~~ owner,
7 beneficiary or payee of a policy or contract with respect to ~~such~~
8 the policy or contracts, including without limitation, in the case
9 of a structured settlement annuity, any rights of the owner,
10 beneficiary or payee of the annuity, to the extent of benefits
11 received pursuant to the Oklahoma Life and Health Insurance Guaranty
12 Association Act, against a person originally or by succession
13 responsible for the losses arising from the personal injury relating
14 to the annuity or payment therefore, excepting any person
15 responsible solely by reason of serving as an assignee in respect of
16 a qualified assignment under Internal Revenue Code Section 130.

17 4. If paragraphs 1 through 3 of this subsection are invalid or
18 ineffective with respect to any person or claim for any reason, the
19 amount payable by the Association with respect to the related
20 covered obligations shall be reduced by the amount realized by any
21 other person with respect to the person or claim that is
22 attributable to the policies, or portion thereof, covered by the
23 Association.

24

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

7 L. In addition to the rights and powers specified in the
8 Oklahoma Life and Health Insurance Guaranty Association Act, the
9 Association may:

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

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

17 3. Borrow money to effect the purposes of the Oklahoma Life and
18 Health Insurance Guaranty Association Act. Any notes or other
19 evidence of indebtedness of the Association not in default shall be
20 legal investments for domestic insurers and may be carried as
21 admitted assets;

22 4. Employ or retain persons as are necessary or appropriate to
23 handle the financial transactions of the Association, and to perform
24

1 other functions as become necessary or proper under the Oklahoma
2 Life and Health Insurance Guaranty Association Act;

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

5 6. Exercise, for the purposes of the Oklahoma Life and Health
6 Insurance Guaranty Association Act and to the extent approved by the
7 Commissioner, the powers of a domestic life or health insurer, but
8 in no case may the Association issue insurance policies or annuity
9 contracts other than those issued to perform its obligations under
10 the Oklahoma Life and Health Insurance Guaranty Association Act;

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

13 8. Request information from a person seeking coverage from the
14 Association in order to aid the Association in determining its
15 obligations under the Oklahoma Life and Health Insurance Guaranty
16 Association Act with respect to the person, and the person shall
17 promptly comply with the request; and

18 9. Take other necessary or appropriate action to discharge its
19 duties and obligations under the Oklahoma Life and Health Insurance
20 Guaranty Association Act or to exercise its powers under the
21 Oklahoma Life and Health Insurance Guaranty Association Act.

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

1 N. 1. a. At any time within one hundred eighty (180) days of
2 the date of the order of liquidation, the Association
3 may elect to succeed to the rights and obligations of
4 the ceding member insurer that relate to policies or
5 annuities covered, in whole or in part, by the
6 Association, in each case under any one or more
7 reinsurance contracts entered into by the insolvent
8 insurer and its reinsurers and selected by the
9 Association. Any assumption shall be effective as of
10 the date of the order of liquidation. The election
11 shall be effected by the Association or the National
12 Organization of Life and Health Insurance Guaranty
13 Associations (NOLHGA) on its behalf sending written
14 notice, return receipt requested, to the affected
15 reinsurers.

16 b. To facilitate the earliest practicable decision about
17 whether to assume any of the contracts of reinsurance,
18 and in order to protect the financial position of the
19 estate, the receiver and each reinsurer of the ceding
20 member insurer shall make available upon request to
21 the Association or to NOLHGA on its behalf as soon as
22 possible after commencement of formal delinquency
23 proceedings, copies of in-force contracts of
24 reinsurance and all related files and records relevant

1 to the determination of whether the contracts should
2 be assumed, and notices of any defaults under the
3 reinsurance contracts or any known event or condition
4 which with the passage of time could become a default
5 under the reinsurance contracts.

6 c. The requirements provided in this subparagraph shall
7 apply to reinsurance contracts assumed by the
8 Association:

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

1 (2) the Association shall be entitled to any amounts
2 payable by the reinsurer under the reinsurance
3 contracts with respect to losses or events that
4 occur in periods after the date of the order of
5 liquidation and that relate to policies or
6 annuities covered, in whole or in part, by the
7 Association, provided that, upon receipt of any
8 of these amounts, the Association shall be
9 obliged to pay to the beneficiary under the
10 policy or annuity on account of which the amounts
11 were paid a portion of the amount equal to the
12 lesser of:

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

14 (b) the excess of the amount received by the
15 Association over the amount equal to the
16 benefits paid by the Association on account
17 of the policy or annuity less the retention
18 of the insurer applicable to the loss or
19 event,

20 (3) within thirty (30) days following the election
21 date of the Association, the Association and each
22 reinsurer under contracts assumed by the
23 Association shall calculate the net balance due
24 to or from the Association under each reinsurance

1 contract as of the election date with respect to
2 policies or annuities covered, in whole or in
3 part, by the Association, which calculation shall
4 give full credit to all items paid by either the
5 insurer or its receiver or the reinsurer prior to
6 the election date. The reinsurer shall pay the
7 receiver any amounts due for losses or events
8 prior to the date of the order of liquidation,
9 subject to any set-off for premiums unpaid for
10 periods prior to the date, and the Association or
11 reinsurer shall pay any remaining balance due the
12 other, in each case within five (5) days of the
13 completion of the aforementioned calculation. Any
14 disputes over the amounts due to either the
15 Association or the reinsurer shall be resolved by
16 arbitration pursuant to the terms of the affected
17 reinsurance contracts or, if the contract
18 contains no arbitration clause, as otherwise
19 provided by law. If the receiver has received any
20 amounts due the Association pursuant to division
21 (2) of this subparagraph, the receiver shall
22 remit the same to the Association as promptly as
23 practicable, and

1 (4) if the Association or receiver, on the behalf of
2 the Association, within sixty (60) days of the
3 election date, pays the unpaid premiums due for
4 periods both before and after the election date
5 that relate to policies or annuities covered, in
6 whole or in part, by the Association, the
7 reinsurer shall not be entitled to terminate the
8 reinsurance contracts for failure to pay the
9 premium insofar as the reinsurance contracts
10 relate to policies or annuities covered, in whole
11 or in part, by the Association, and shall not be
12 entitled to set off any unpaid amounts due under
13 other contracts, or unpaid amounts due from
14 parties other than the Association, against
15 amounts due the Association.

16 2. During the period from the date of the order of liquidation
17 until the election date, or if the election date does not occur,
18 until one hundred eighty (180) days after the date of the order of
19 liquidation:

20 a. (1) neither the Association nor the reinsurer shall
21 have any rights or obligations under reinsurance
22 contracts that the Association has the right to
23 assume under paragraph 1 of this subsection,
24

1 whether for periods prior to or after the date of
2 the order of liquidation, and

3 (2) the reinsurer, the receiver and the Association
4 shall, to the extent practicable, provide each
5 other data and records reasonably requested.

6 b. Provided that once the Association has elected to
7 assume a reinsurance contract, the rights and
8 obligations of the parties shall be governed by
9 paragraph 1 of this subsection.

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

15 4. When policies or annuities, or covered obligations with
16 respect thereto, are transferred to an assuming insurer, reinsurance
17 on the policies or annuities may also be transferred by the
18 Association, in the case of contracts assumed under paragraph 1 of
19 this subsection, subject to the following:

20 a. unless the reinsurer and the assuming insurer agree
21 otherwise, the reinsurance contract transferred shall
22 not cover any new policies of insurance or annuities
23 in addition to those transferred,

1 b. the obligations described in paragraph 1 of this
2 subsection shall no longer apply with respect to
3 matters arising after the effective date of the
4 transfer, and

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

9 5. The provisions of this subsection shall govern any affected
10 reinsurance contract that provides for or requires any payment of
11 reinsurance proceeds, on account of losses or events that occur in
12 periods after the date of the order of liquidation, to the receiver
13 of the insolvent insurer or any other person. The receiver shall
14 remain entitled to any amounts payable by the reinsurer under the
15 reinsurance contracts with respect to losses or events that occur in
16 periods prior to the date of the order of liquidation, subject to
17 applicable setoff provisions.

18 6. Except as otherwise provided in this section, nothing in
19 this subsection shall alter or modify the terms and conditions of
20 any reinsurance contract. Nothing in this section shall abrogate or
21 limit any rights of any reinsurer to claim that it is entitled to
22 rescind a reinsurance contract. Nothing in this section shall give
23 a policyholder or beneficiary an independent cause of action against
24 a reinsurer that is not otherwise set forth in the reinsurance

1 contract. Nothing in this section shall limit or affect the rights
2 of the Association as a creditor of the estate against the assets of
3 the state. Nothing in this section shall apply to reinsurance
4 agreements covering property or casualty risks.

5 O. The Board of Directors of the Association shall have
6 discretion and may exercise reasonable business judgment to
7 determine the means by which the Association is to provide the
8 benefits of the Oklahoma Life and Health Insurance Guaranty
9 Association Act in an economical and efficient manner.

10 P. Where the Association has arranged or offered to provide the
11 benefits of the Oklahoma Life and Health Insurance Guaranty
12 Association Act to a covered person under a plan or arrangement that
13 fulfills the obligations of the Association under the Oklahoma Life
14 and Health Insurance Guaranty Association Act, the person shall not
15 be entitled to benefits from the Association in addition to or other
16 than those provided under the plan or arrangement.

17 Q. Venue in a suit against the Association arising under the
18 Oklahoma Life and Health Insurance Guaranty Association Act shall be
19 in Oklahoma County. The Association shall not be required to give
20 an appeal bond in an appeal that relates to a cause of action
21 arising under the Oklahoma Life and Health Insurance Guaranty
22 Association Act.

23 R. In carrying out its duties in connection with guaranteeing,
24 assuming or reinsuring policies or contracts under subsection A or B

1 of this section, the Association may, subject to approval of the
2 receivership court, issue substitute coverage for a policy or
3 contract that provides an interest rate, crediting rate or similar
4 factor determined by use of an index or other external reference
5 stated in the policy or contract employed in calculating returns or
6 changes in value by issuing an alternative policy or contract in
7 accordance with the following provisions:

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

11 a. a fixed interest rate,

12 b. payment of dividends with minimum guarantees, or

13 c. a different method for calculating interest or changes
14 in value;

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

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

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

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

24

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

- 6 a. revocation of license,
- 7 b. suspension of license, or
- 8 c. makes ~~any~~ a formal order that ~~such~~ the company
9 restrict its premium writing, obtain additional
10 contributions to surplus, withdraw from the state,
11 reinsure all or any part of its business, or increase
12 capital, surplus or any other account for the security
13 of ~~policyholders~~ policy owners or creditors.

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

17 2. To report to the ~~Board~~ board of directors when ~~he~~ the
18 Commissioner has taken any of the actions set forth in paragraph 1
19 of this subsection or has received a report from any other ~~state~~
20 commissioner of other states indicating that any ~~such~~ action has
21 been taken in another state. ~~Such~~ The report to the ~~Board~~ board of
22 directors shall contain all significant details of the action taken
23 or the report received from a commissioner from another state;

24

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

5 4. To furnish to the ~~Board~~ information, if available, which is
6 contained in the Early Warning Tests developed by the National
7 Association of Insurance Commissioners board of directors the
8 National Association of Insurance Commissioners (NAIC) Insurance
9 Regulatory Information System (IRIS) ratios and listings of
10 companies not included in the ratios developed by the NAIC, and
11 board may use the information contained therein in carrying out its
12 duties and responsibilities under this section. The report and the
13 information contained therein shall be kept confidential by the
14 board of directors until a time as made public by the Commissioner
15 or other lawful authority.

16 B. The Commissioner may seek the advice and recommendations of
17 the ~~Board~~ board of directors concerning any matter affecting ~~his~~ the
18 duties and responsibilities of the Commissioner regarding the
19 financial condition of member insurers and companies ~~and companies~~
20 seeking admission to transact insurance business in this state.

21 C. The board of directors may, upon majority vote, make reports
22 and recommendations to the Commissioner upon any matter germane to
23 the solvency, liquidation, rehabilitation or conservation of any
24 member insurer or germane to the solvency of any company seeking to

1 do an insurance business in this state. The reports and
2 recommendations shall not be considered public documents.

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

6 E. The board of directors may, upon majority vote, make
7 recommendations to the Commissioner for the detection and prevention
8 of insurer insolvencies.

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

11 Section 2036. A. For the purpose of carrying out its
12 obligations under ~~this act~~ the Oklahoma Life and Health Insurance
13 Guaranty Association Act, the Oklahoma Life and Health Insurance
14 Guaranty Association shall be deemed to be a creditor of the
15 impaired or insolvent insurer to the extent of assets attributable
16 to covered policies reduced by any amounts to which the Association
17 is entitled as subrogee pursuant to paragraph 8 of Section ~~§ 2028~~ of
18 ~~this act~~ title. ~~All assets~~ Assets of the impaired or insolvent
19 insurer attributable to covered policies shall be used to continue
20 all covered policies and pay all contractual obligations of the
21 impaired or insolvent insurer as required by ~~this act~~ the Oklahoma
22 Life and Health Insurance Guaranty Association Act. Assets
23 attributable to covered policies, as used in this subsection, are
24 that proportion of the assets ~~which~~ that the reserves which should

1 have been established for such policies, bear to the reserves which
2 should have been established for all policies of insurance written
3 by the impaired or insolvent insurer.

4 B. As a creditor of the impaired or insolvent insurer as
5 established in subsection A of this section and consistent with
6 Section 1927.1 of this title, the Association and other similar
7 associations shall be entitled to receive a disbursement of assets
8 out of the marshaled assets, from time to time as the assets become
9 available to reimburse it, as a credit against contractual
10 obligations under this act. If the liquidator has not, within one
11 hundred twenty (120) days of a final determination of insolvency of
12 an insurer by the receivership court, made an application to the
13 court for the approval of a proposal to disburse assets out of
14 marshaled assets to guaranty associations having obligations because
15 of the insolvency, then the Association shall be entitled to make
16 application to the receivership court for approval of its own
17 proposal to disburse these assets.

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

20 Section 2042. All proceedings in which the insolvent insurer is
21 a party in any court in this state shall be stayed ~~sixty (60)~~ one
22 hundred eighty (180) days from the date an order of liquidation,
23 rehabilitation, ~~receivership~~ or ~~conservatorship~~ conservation is
24 final to permit proper legal action by the Oklahoma Life and Health

1 Insurance Guaranty Association on any matters germane to its powers
2 or duties. As to judgment under any decision, order, verdict or
3 finding based on default, the Association may apply to have ~~such~~ the
4 judgment set aside by the same court that made ~~such~~ the judgment and
5 shall be permitted to defend against ~~such~~ the suit on the merits.

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

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

12 SECTION 8. REPEALER 36 O.S. 2001, Sections 2029 and
13 2033, are hereby repealed.

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

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