STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 2044 By: Brown of the Senate

and

(Sullivan) of the House

COMMITTEE SUBSTITUTE

[insurance - Oklahoma Property and Casualty Insurance Guaranty Association Act - effective date]

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 2002, is amended to read as follows:

Section 2002. A. The purpose of ~~this act~~ the Oklahoma Property and Casualty Insurance Guaranty Association Act is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment, to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, ~~to assist in the detection and prevention of insurer insolvencies,~~ and to provide an association to assess the cost of ~~such~~ protection among insurers.

B. The Oklahoma Property and Casualty Insurance Guaranty Association Act shall be construed to effect the purpose provided for in subsection A of this section which shall constitute an aid and guide to interpretation of the Oklahoma Property and Casualty Insurance Guaranty Association Act.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 2003, is amended to read as follows:

Section 2003. The Oklahoma Property and Casualty Insurance Guaranty Association Act shall apply to ~~workers' compensation equivalent insurance products approved pursuant to Section 1 of this act and to~~ all kinds of direct insurance, ~~except life, accident,~~ but shall not be applicable to the following:

1. Life, annuity, health, ~~ocean~~ or disability insurance;

2. Ocean marine insurance~~, surety and title~~;

3. Fidelity or surety bonds, or any other bonding obligations;

4. Title, as defined in Sections 702, 703, 705, 708 and 709 of this title, mortgage or financial guaranty insurance or other forms of insurance offering protection against investment risks~~, credit~~;

5. Credit insurance, insurance of warranties or service contracts, annuities, vendors single interest insurance, collateral protection insurance~~, any~~; and

6. Any transaction or combination of transactions between a person, including affiliates of ~~such~~ the person, and an insurer, including affiliates of ~~such~~ the insurer, which involves the

transfer of investment or credit risk unaccompanied by transfer of investment risk.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 2004, is amended to read as follows:

Section 2004. As used in the Oklahoma Property and Casualty Insurance Guaranty Association Act:

1. "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ~~an insolvent insurer~~ another person on December 31 of the year next preceding the date the insurer becomes an insolvent insurer;

2. "Association" means the Oklahoma Property and Casualty Insurance Guaranty Association as created in Section 2005 of this title;

3. "Assumed claims transaction" means:

a. policy obligations that have been assumed by the insolvent insurer, prior to the entry of a final order of liquidation, pursuant to a plan, approved by a domestic commissioner of the assuming insurer, which transfers the direct policy obligations and future policy renewals from one insurer to another insurer, or

b. an assumption reinsurance transaction in which all of the following have occurred:

(1) the insolvent insurer assumed, prior to the entry of a final order of liquidation, the claim or policy obligations of another insurer under the claims or policies,

(2) the assumption of the claim or policy obligations has been approved, if an approval is required, by the appropriate regulatory authorities, and

(3) as a result of the assumption, the claim or policy obligations became the direct obligations of the insolvent insurer through novation of the claims or policies;

4. "Claimant" means ~~any insured making a first-party claim or~~ any person instituting a ~~liability~~ covered claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant;

~~4.~~ 5. "Commissioner" means the Insurance Commissioner of ~~Insurance~~ Oklahoma;

~~5.~~ 6. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the

person. Control shall be presumed to exist if ~~any~~ a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact;

~~6.~~ 7. "Covered claim" means:

a. an unpaid claim ~~of an insured or third party liability claimant~~, including one of unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this act applies ~~issued by an insurer~~, if ~~such~~ the insurer becomes an insolvent insurer after the effective date of this act and ~~(a)~~ the policy was issued by the insurer, and:

(1) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event~~;~~, or ~~(b)~~

(2) the property from which the claim arises is permanently located in this state~~.~~,

b. "Covered claim" shall not include:

(1) any amount awarded as punitive or exemplary damages~~;~~,

(2) any amount sought as a return of premium under any retrospective rating plan~~; or~~,

(3) any amount due any reinsurer, insurer, insurance pool, or underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise~~; provided, that a claim for any such amount, asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. "Covered claim" shall not include supplementary payment obligations including, but not limited to, adjustment fees and expenses, attorneys' fees~~

~~and expenses, court costs, interest and bond premiums incurred prior to the determination that an insurer is an insolvent insurer under this act. "Covered claim" shall also mean the claim of an agent for amounts of unearned premiums advanced or paid by such agent on behalf of a policyholder, however, payment of such covered claims for unearned premiums advanced after the effective date of this section shall be made jointly to such agent and policyholder unless an unconditional written assignment has been executed by the policyholder to the agent~~. No claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association, health maintenance organization, hospital plan corporation, professional health service corporation or self-insurer may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set for in Section 2007 of this title,

(4) any claims excluded pursuant to Section 15 of this act due to the high net worth of an insured,

(5) any first party claims by an insured that is an affiliate of the insolvent company,

(6) any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods and services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent,

(7) any fee or other amount sought by or on behalf of any attorney or other provider of goods and services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the Association,

(8) any claims for interest, or

(9) any claim filed with the association or a liquidator for protection afforded under the policy of the insured for incurred-but-not-reported losses;

~~7. "Director" means any one of the directors of the Association created herein;~~

8. "Insolvent insurer" means an insurer that is licensed ~~by the Commissioner~~ to transact insurance in this state either at the time the policy was issued, when the obligation with respect to the covered claim was assumed under an assumed claims transaction, or

when the insured event occurred and ~~determined to be insolvent and ordered liquidated by a court of competent jurisdiction~~ against whom a final order of liquidation has been entered after the effective date of this act with a finding of insolvency by a court of competent jurisdiction in the state of domicile of the insurer;

9. "Insured" means any named insured, any additional insured, any vendor, lessor or any other party identified as an insured under the policy;

10. a. "Member insurer" means any person who ~~(a)~~:

(1) writes any kind of insurance to which ~~this act~~ the Oklahoma Property and Casualty Insurance Guaranty Association Act applies pursuant to Section 2003 of this title, including the exchange of reciprocal or ~~interinsurance~~ inter-insurance contracts, and ~~(b)~~

(2) is licensed ~~by the Commissioner~~ to transact insurance in this state, except those insurers enumerated in Section 110 of ~~Title 36 of the Oklahoma Statutes~~ this title or those insurers that are otherwise exempted by law or order of the Commissioner.

b. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of

insurance to which the Oklahoma Property and Casualty Insurance Guaranty Association Act applies; however, the insurer shall be liable as a member insurer for any and all obligations, including but not limited to obligations for assessments levied after the termination or expiration, which relate to any insurer that becomes an insolvent insurer prior to the termination or expiration of the license of the insurer;

~~10.~~ 11. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, including but not limited to policy and membership fees, less the following amounts:

a. return premiums ~~thereon~~,

b. premiums on policies not taken, and

c. dividends paid or credited to policyholders on ~~such~~ direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers; ~~and~~

~~11.~~ 12. "Novation" means that the assumed claim or policy obligations became the direct obligations of the insolvent insurer through consent of the policyholder and that thereafter the ceding insurer or entity initially obligated under the claims or policies is released by the policyholder from performing its claim or policy

obligations. Consent shall be express and an implied novation shall not be allowed for the purposes, implementation and application of the Oklahoma Property and Casualty Insurance Guaranty Association Act;

13. "Person" means ~~an individual, company, insurer, association, organization, society, reciprocal or interinsurance, exchange partnership, syndicate, business trust, corporation, Lloyds association, voluntary association or entity and association, group or department of underwriters~~ the individual or other entities as defined in Section 104 of this title;

14. "Receiver" means liquidator, rehabilitator, conservator or ancillary receiver, as the context requires; and

15. "Self-insurer" means a person who covers its liability through a qualified individual or group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 2005, is amended to read as follows:

Section 2005. A. There is hereby created a nonprofit ~~organization~~, unincorporated legal entity to be known as the Oklahoma Property and Casualty Insurance Guaranty Association ~~to effectuate the purposes of the Oklahoma Property and Casualty Insurance Guaranty Association Act. The Association shall be administered in accordance with the provisions of the Oklahoma~~

~~Property and Casualty Insurance Guaranty Association Act and the board of directors is empowered to do all things necessary to effectuate the purposes of the Oklahoma Property and Casualty Insurance Guaranty Association Act and to administer the Association~~. For purposes of administration and assessment, the Association shall be divided into three separate accounts:

1. The workers' compensation insurance account;

2. The automobile insurance account; and

3. The account for all other insurance to which the Oklahoma Property and Casualty Insurance Guaranty Association Act applies.

B. All insurers defined as member insurers pursuant to Section 2004 of this title shall be and remain members of the Association as a condition of their authority to transact insurance in this state. The Association shall perform its functions under a plan of operation established and approved under the Oklahoma Property and Casualty Insurance Guaranty Association Act.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 2006, is amended to read as follows:

Section 2006. A. The business and functions of the Oklahoma Property and Casualty Insurance Guaranty Association shall be managed and administered by a board of twelve (12) directors composed of two members selected by the American Insurance Association~~,~~ who are member insurers; two members selected by the Alliance of American Insurers~~,~~ who are member insurers; two members

selected by the National Association of Independent Insurers~~,~~ who are member insurers; two Oklahoma domestic insurers~~,~~ who are member insurers; two nonaffiliated foreign or alien insurers~~,~~ who are member insurers; two insurance agents who shall serve as ex officio members on the board. One of the ex officio members shall be the Executive Director of the Independent Insurance Agents of Oklahoma, Inc.; the other ex officio member shall be a licensed, resident property and casualty insurance agent chosen by the Governor. Each member of the board of directors shall designate a full-time salaried employee to represent it on the board of directors. Each member except for the ex officio members shall serve for a term of two (2) years. The ex officio member who is appointed by the Governor shall serve at the pleasure of the Governor. The members of the board of directors except for the ex officio members shall be subject to approval by the Commissioner. Vacancies on the board except for the ex officio members shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the Commissioner. If no members are selected and appointed within sixty (60) days after the effective date of this act, the Commissioner may appoint the initial members of the board of directors.

B. In approving selections to the board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

C. Members of the board shall serve without compensation but may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 2007, is amended to read as follows:

Section 2007. A. The Oklahoma Property and Casualty Insurance Guaranty Association shall:

1. Be obligated to pay the covered claims existing prior to the determination of insolvency if the claims arise within thirty (30) days after the determination of insolvency, or before the policy expiration date if less than thirty (30) days after the determination, or before the insured replaces the policy or causes its cancellation, if ~~he~~ the insured does so within thirty (30) days of the determination. ~~Such~~ The obligation shall be satisfied by paying to the claimant an amount as follows:

a. the full amount of a covered claim for benefits under a workers' compensation insurance coverage,

b. an amount not exceeding Ten Thousand Dollars ($10,000.00) per policy for a covered claim for the return of unearned premium, and

c. an amount not exceeding One Hundred Fifty Thousand Dollars ($150,000.00) per claimant for all other covered claims.

In no event shall the Association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises or in excess of the limits of the ~~Association's~~ obligation of the Association existing on the date on which the order of liquidation is filed with the court clerk;

2. Any obligation of the association to defend an insured shall cease upon the payment or tender by the association of an amount equal to the lesser of the covered claim obligation limit of the association or the applicable policy limit;

3. Be deemed the insurer to the extent of the obligations on covered claims and to that extent subject to the limitations provided in the Oklahoma Property and Casualty Insurance Guaranty Association Act shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent, including but not limited to the right to pursue and retain salvage and subrogation recoverable on covered claim obligations to the extent paid by the association. The association shall not be deemed the insolvent insurer for the purpose of conferring jurisdiction;

~~3.~~ 4. Allocate claims paid and expenses incurred among the three accounts set out in Section 2005 of this title separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the Association under this section subsequent to a member insurer becoming an insolvent insurer, the

expenses of handling covered claims subsequent to an insolvency, ~~the cost of examinations under Section 2013 of this title,~~ and other expenses authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act, Sections 2001 ~~et seq.~~ through 2020 of this title and Sections 14 and 15 of this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bear to the net direct written premiums of all participating insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified in writing of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of the net direct written premiums of that member or one percent (1%) of that ~~member insurer's~~ surplus of the member insurer as regards policyholders for the calendar year preceding the assessment on the kinds of insurance in the account, whichever is less. If the maximum assessment, together with the other assets of the Association, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as the claims are

received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the ~~member insurer's~~ financial statement of the member insurer to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. During the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when ~~such~~ the payments will not reduce capital or surplus below required minimums. ~~Such~~ The payments may be refunded to those companies receiving larger assessments by virtue of ~~such~~ the deferment, or, at the election of any ~~such~~ company credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of ~~such~~ covered claims by ~~such~~ a member insurer if they are chargeable to the account for which the assessment is made;

~~4.~~ 5. Investigate claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the obligation of the Association and deny all other claims ~~and may review settlements, releases and judgments on covered claims to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and~~

~~judgments may be properly contested~~. The Association shall pay claims in any order that it may deem reasonable, including, but not limited to, the payment of claims as they are received from claimants or in groups of categories of claims. The Association shall have the right to select and to direct legal counsel under liability insurance policies for the defense of covered claims;

~~5.~~ 6. Notify ~~such persons~~ claimants in this state as deemed necessary by the Commissioner ~~directs as provided for in Section 2009 of this title~~ and upon the request of the Commissioner, to the extent records are available to the Association;

~~6.~~

7. a. Handle claims through employees or through one or more insurers or other persons incorporated and resident in the State of Oklahoma designated as servicing facilities. Designation of a servicing facility is subject to approval of the Commissioner, but such designation may be declined by a member insurer.

b. The Association shall have the right to review and contest as set forth in this paragraph, settlements, releases, compromises, waivers and judgments to which the insolvent insurer or its insureds were parties prior to the entry of the order of liquidation. In an action to enforce settlements, releases and judgments to which the insolvent insurer or its insureds were

parties prior to the entry of the order of liquidation, the Association shall have the right to assert the following defenses:

(1) the Association shall not be bound by a settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment entered against the insured or the insurer by consent or through a failure to exhaust all appeals, if the settlement, release, compromise waiver or judgment was:

(a) executed or entered within one hundred twenty (120) days prior to the entry of an order of liquidation, and the insured or the insurer did not use reasonable care in entering into the settlement, release, compromise, waiver or judgment, or did not pursue all reasonable appeals of an adverse judgment, or

(b) executed by or taken against an insured or the insurer based on default, fraud, collusion or the failure of the insurer to defend,

(2) if a court of competent jurisdiction finds that the Association is not bound by a settlement,

release, compromise, waiver or judgment for the releases provided for in division (1) of subparagraph b of this paragraph, the settlement, release, compromise, waiver or judgment shall be set aside and the Association shall be permitted to defend any covered claim on the merits. The settlement, release, compromise, waiver or judgment shall not be considered as evidence of liability in connection with any claim brought against the Association or any other party pursuant to the Oklahoma Property and Casualty Insurance Guaranty Association Act, and

(3) the Association shall have the right to assert any statutory defenses or rights of offset against any settlement, release, compromise or waiver executed by an insured or the insurer, or any judgment taken against the insured or the insurer.

c. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend, the Association, either on its own behalf or on behalf of an insured, may apply to have the judgment, order, decision, verdict or finding set aside by the same

court or administrator that entered the judgment, claim, decision, verdict or finding and shall be permitted to defend on the merits;

~~7.~~ 8. Reimburse each servicing facility for obligations of the Association paid by the facility and for reasonable expenses incurred by the facility while handling claims on behalf of the Association and pay the other expenses of the Association authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act; and

~~8.~~ 9. Have standing to appear before any court of this state which has jurisdiction over an impaired or insolvent insurer for whom the Association is or may become obligated pursuant to the provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act. ~~Such standing~~ Standing shall extend to all matters germane to the powers and duties of the Association including, but not limited to, proposals for rehabilitation, acquisition, merger, reinsuring, or guaranteeing the covered policies of the impaired or insolvent insurer, and the determination of covered policies and contractual obligations of the impaired or insolvent insurer.

B. The Association may:

1. Employ or retain ~~such~~ persons as are necessary to handle claims and perform other duties of the Association;

2. Borrow funds necessary to effect the purposes of the Oklahoma Property and Casualty Insurance Guaranty Association Act in accordance with the plan of operation;

3. Sue or be sued;

4. Negotiate and become a party to ~~such~~ contracts as are necessary to carry out the purpose of the Oklahoma Property and Casualty Insurance Guaranty Association Act;

5. Refund to member insurers in proportion to the contribution of each member insurer that amount by which the assets of the Association exceed its liabilities, if at the end of any calendar year the board of directors finds that the assets of the Association exceed the liabilities as estimated by the board of directors for the coming year;

6. Lend monies to an insurer declared to be impaired by the Commissioner. The Association, with approval of the Commissioner, shall approve the amount, length and terms of the loan. "Impaired Insurer" for purposes of this paragraph shall mean an insurer potentially unable to fulfill its contractual obligations, but shall not mean an insolvent insurer;

7. Perform ~~such~~ other acts as are necessary or proper to effectuate the purpose of the Oklahoma Property and Casualty Insurance Guaranty Association Act; ~~and~~

8. Intervene as a party in interest in any supervision, conservation, liquidation, rehabilitation, impairment or

receivership in which policyholders interests and interests of the Association may be or are affected; and

9. Be designated or may contract as a servicing facility for any entity which may be recommended by the board of directors of the Association and shall be approved by the Commissioner.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 2008, is amended to read as follows:

Section 2008. A. The Oklahoma Property and Casualty Insurance Guaranty Association shall submit to the Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

B. If the Association fails to submit a suitable plan of operation within ninety (90) days following the effective date of this act or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt and promulgate ~~such~~ reasonable rules as are necessary or advisable to effectuate the provisions of this act. ~~Such~~ Any rules promulgated shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner. All member insurers shall comply with the plan of operation.

C. The plan of operation shall:

1. Establish the procedures whereby all the powers and duties of the Association under this act will be performed;

2. Establish procedures for handling assets of the Association;

3. ~~Establish~~ Require the amount and method of reimbursing members of the board of directors under Section 2006 of this title;

4. Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims~~. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of such claims shall be periodically submitted to the Association or similar organization in another state by the receiver or liquidator~~;

5. Establish regular places and times for meetings of the board of directors;

6. ~~Establish~~ Require that the written procedures be established for records to be kept of all financial transactions of the Association, its agents and the board of directors;

7. Provide that any member insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within thirty (30) days after the action or decision;

8. Establish the procedures whereby selections for the board of directors will be submitted to the Commissioner; and

9. Contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

D. The plan of operation may provide that any or all powers and duties of the Association, except those under paragraph 3 of subsection A and paragraph 2 of subsection B of Section 2007 of this title, are delegated to a corporation, association or other organization incorporated and resident in the State of Oklahoma which performs or will perform functions similar to those of this Association, or its equivalent. ~~Such a~~ The corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the Commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this act.

SECTION 8. AMENDATORY 36 O.S. 2001, Section 2009, is amended to read as follows:

Section 2009. A. The Commissioner shall:

1. Notify the Oklahoma Property and Casualty Insurance Guaranty Association of the existence of an insolvent insurer not later than three (3) days after ~~he receives~~ notice of the determination ~~of the insolvency~~ is received. The Association shall be entitled to a copy of a complaint seeking an order of liquidation with a finding of

insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction; and

2. ~~Upon request of the board of directors, provide~~ Provide the Association with a statement of the net direct written premiums of each member insurer upon the request of the board of directors.

B. The Commissioner may:

1. ~~Require that the Association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address. Notice by publication in a newspaper of general circulation shall be sufficient where no address is known;~~

~~2.~~ Suspend or revoke, after the notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commissioner may levy a fine on any member insurer which fails to pay an assessment when due. ~~Such~~ The fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than One Hundred Dollars ($100.00) per month; ~~or~~

~~3.~~ 2. Revoke the designation of any servicing facility if ~~he~~ the Commissioner finds claims are being handled unsatisfactorily; or

3. Examine or audit the Association.

C. Any final action or order of the Commissioner under ~~this act~~ the Oklahoma Property and Casualty Insurance Guaranty Association Act shall be subject to judicial review in a court of competent jurisdiction.

SECTION 9. AMENDATORY 36 O.S. 2001, Section 2010, is amended to read as follows:

Section 2010. A. Any person recovering under ~~this act~~ the Oklahoma Property and Casualty Insurance Guaranty Association Act shall be deemed to have assigned ~~his~~ the rights of the person under the policy to the Oklahoma Property and Casualty Insurance Guaranty Association to the extent of ~~his~~ the recovery of the person from the Association. Every insurer or claimant seeking the protection of this act shall cooperate with the Association to the same extent as ~~such~~ the person would have been required to cooperate with the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payment of covered claims by the Association shall not operate to reduce the liability of ~~insured~~ insureds to the receiver, liquidator or statutory successor for unpaid assessments.

B. The Association shall have the right to recover from ~~the following persons the amount of any "covered claim"~~ any person who is an affiliate of the insolvent insurer all amounts paid by the Association on behalf of ~~such~~ that person pursuant to the provisions

of the Oklahoma Property and Casualty Insurance Guaranty Association Act~~:~~

~~1. Any insured whose net worth on December 31 of the year next preceding the date the insurer becomes an insolvent insurer exceeds Fifty Million Dollars ($50,000,000.00) and whose liability obligations to other persons are satisfied in whole or in part by payments made pursuant to the provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act; and~~

~~2. Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made pursuant to the provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act~~, whether for indemnity, defense or otherwise.

C. The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another state. The Association shall have a priority over general creditors of the insolvent insurer against the assets of the insolvent insurer equal to the amount of covered claims paid by the Association pursuant to ~~this act. The expenses of the Association in handling claims shall be accorded the same priority as the liquidator's expenses~~ the Oklahoma Property and Casualty Insurance Guaranty Association Act. No other priority under the provisions of this section unless the laws of such other state grant a similar priority to the

Association, in which case such other association or similar organization of another state shall have a priority against the assets of the insolvent insurer equal to that given to the Association by such other state.

D. The Association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the Association and estimates of anticipated claims on the Association which shall preserve the rights of the Association against the assets of the insolvent insurer.

SECTION 10. AMENDATORY 36 O.S. 2001, Section 2012, is amended to read as follows:

Section 2012. A. 1. Any person having a claim against an insurer ~~under any provision of an insurance policy other than a policy of the insolvent insurer which is also a covered claim~~ shall be required to first exhaust ~~his rights under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such other insurance policy. The provisions of this subsection shall not apply to uninsured motorist coverage~~ all coverage provided by another policy if it arises from the same facts, injury or loss that gave rise to the covered claim against the Oklahoma Property and Casualty Insurance Guaranty Association. The requirement to exhaust all coverage shall apply without regard to whether the other insurance policy is a policy written by a member insurer. However, no person shall be required

to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy.

2. Any amount payable on a covered claim under the Oklahoma Property and Casualty Insurance Guaranty Association Act shall be reduced by the full applicable limits stated in the insurance policy or by the amount of the recovery under the insurance policy as provided herein. The Association shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy. If the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the insurance policy, or if there are no applicable stated limits under the policy, the Association shall receive a full credit for the total recovery.

B. ~~Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim shall be required to exhaust first his right under such program. Any amount payable on a covered claim pursuant to the provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act shall be reduced by the amount of any recovery under such program.~~

~~C.~~ Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent in another state shall seek recovery first from the association of the place of

residence of the insured. If it is a first party claim for damage to property with a permanent location, ~~he~~ the person shall seek recovery first from the association of the state where the property is located, and if it is a workers' compensation claim, ~~he~~ the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

SECTION 11. AMENDATORY 36 O.S. 2001, Section 2016, is amended to read as follows:

Section 2016. The Oklahoma Property and Casualty Insurance Guaranty Association shall be subject to the examination by the ~~Commission~~ Commissioner and a report shall be made not less than annually by the board of directors concerning the financial condition of the Association. The report shall be made in such form as the Commissioner shall prescribe.

SECTION 12. AMENDATORY 36 O.S. 2001, Section 2018, as amended by Section 51, Chapter 264, O.S.L. 2006 (36 O.S. Supp. 2009, Section 2018), is amended to read as follows:

Section 2018. Any member insurer who has paid an assessment pursuant to the Oklahoma Property and Casualty Insurance Guaranty Association Act shall include amounts sufficient to recoup a sum equal to the amounts paid to the Oklahoma Property and Casualty Insurance Guaranty Association by the member insurer, less any

amounts returned to the member insurer by the Association. ~~Such rates~~ Rates shall not be deemed excessive because they contain an additional amount reasonably calculated to recoup all assessments paid by the member insurer in its next filing for a rate increase or decrease before the Insurance Commissioner.

SECTION 13. AMENDATORY 36 O.S. 2001, Section 2020, is amended to read as follows:

Section 2020. All proceedings in which the insolvent insurer, its policyholder, or the Oklahoma Property and Casualty Insurance Guaranty Association is a party in any court in this state shall be stayed ~~one hundred twenty (120) days from the date an order of liquidation, rehabilitation, receivership or conservatorship is final to permit proper legal action by the Association on any matters germane to its powers and duties. As to judgment under any decision, order, verdict or finding based on default, the Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits~~ six (6) months and additional time may be determined by the court from the date when insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. The liquidator, receiver or statutory successor of an insolvent insurer covered by this act shall permit the board or its authorized representative access to the records of

the insolvent insurer as are necessary to the board in carrying out its functions under this act with regard to the covered claims. In addition, the liquidator, receiver or statutory successor shall provide the board or its representative with copies of those records upon the request of the board and at the expense of the board.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2020.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Property and Casualty Insurance Guaranty Association, in cooperation with other obligated or potentially obligated guaranty associations, or their designated representatives, shall make all reasonable efforts to coordinate and cooperate with receivers, or their designated representatives, in the most efficient and uniform manner, including the use of Uniform Data Standards as promulgated or approved by the National Association of Insurance Commissioners.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2020.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section, "high net worth insured" means any insured whose net worth exceeds Fifty Million Dollars ($50,000,000.00) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer; provided that the net worth of an insured on that date shall be deemed to include the

aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis.

B. 1. The Oklahoma Property and Casualty Insurance Guaranty Association shall not be obligated to pay any first party claims by a high net worth insured; and

2. The Association shall have the right to recover from a high net worth insured all amounts paid by the association to or on behalf of the insured, whether for indemnity, defense or otherwise.

C. The Association shall not be obligated to pay any claim that would otherwise be a covered claim that is an obligation to or on behalf of a person who has a net worth greater than that allowed by the insurance guaranty association law of the state of residence of the claimant at the time specified by the applicable law of that state, and which association has denied coverage to that claimant on that basis.

D. The Association shall establish reasonable procedures for requesting financial information from insureds on a confidential basis for purposes of applying this section, provided that the financial information may be shared with any other association similar to the association and the liquidator for the insolvent insurer on the same confidential basis. Any request to an insured seeking financial information shall advise the insured of the consequences of failing to provide the financial information. If an insured refuses to provide the requested financial information where

it is requested and available, the Association may, until the time as the information is provided, provisionally deem the insured to be a high net worth insured for the purpose of denying a claim under subsection B of this section.

E. In any lawsuit contesting the applicability of this section where the insured has refused to provide financial information under the procedure established pursuant to subsection D of this section, the insured shall bear the burden of proof concerning its net worth at the relevant time. If the insured fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the association its full costs, expenses and reasonable attorney fees in contesting the claim.

SECTION 16. REPEALER 36 O.S. 2001, Section 2013, is hereby repealed.

SECTION 17. This act shall become effective November 1, 2010.

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