

THE HOUSE OF REPRESENTATIVES  
Thursday, April 01, 2010

ENGROSSED  
Senate Bill No. 2043

ENGROSSED SENATE BILL NO. 2043 - By: BROWN of the Senate and SULLIVAN of the House.

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

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

- 1           SECTION 1.    AMENDATORY    36 O.S. 2001, Section 2024, is amended to read  
2 as follows:  
3           Section 2024. As used in ~~Section~~ Sections 2021 ~~et seq.~~ through 2043 of this title:

- 1           1. "Account" means ~~any~~ either of the ~~three~~ two accounts created under Section 2023  
2 of ~~the Insurance Code~~ this title;
- 3           2. "Association" means the Oklahoma Life and Health Insurance Guaranty  
4 Association created in Section 2023 of ~~the Insurance Code~~ this title;
- 5           3. ~~"Board" means Board of Directors of the Oklahoma Life and Health Insurance~~  
6 ~~Guaranty Association~~ "Commissioner" means the Oklahoma Insurance Commissioner;
- 7           4. "Contractual obligation" means ~~any~~ an obligation under a policy or contract or  
8 certificate under a group policy or contract, or portion thereof for which coverage is  
9 provided under Section 2025 of ~~the Insurance Code~~ this title;
- 10          5. "Covered policy" means ~~any~~ a policy or contract ~~specified in~~ or portion of a policy  
11 or contract for which coverage is provided under Section 2025 of ~~the Insurance Code~~ this  
12 title;
- 13          6. "Extra-contractual claims" includes, but is not limited to, claims relating to bad  
14 faith in the payment of claims, punitive or exemplary damages or attorneys fees and  
15 costs;
- 16          7. "Impaired insurer" means a member insurer which, after the effective date of  
17 this act, is not an insolvent insurer and:  
18           a. ~~is deemed by the Commissioner to be potentially unable to fulfill its~~  
19           ~~contractual obligations; or~~  
20           b. is placed under an order of rehabilitation or conservation by a court of  
21           competent jurisdiction;

1        7. 8. "Insolvent insurer" means a member insurer which, after the effective date of  
2 this act, is placed under an order of liquidation by a court of competent jurisdiction with  
3 a finding of insolvency;

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

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

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

1        ~~10.~~ 11. "Owner, "policy owner" or "contract owner" means the person who is  
2 identified as the legal owner of a policy or contract under the terms of the policy or  
3 contract or who is otherwise vested with legal title to the policy or contract through a  
4 valid assignment completed in accordance with the terms of the policy or contract and  
5 properly recorded as the owner on the books of the insurer. Owner, policy owner or  
6 contract owner does not include persons with a mere beneficial interest in a policy or  
7 contract;

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

10        ~~11. "Premium"~~ 13. "Premiums" means amounts or considerations by whatever  
11 name called, received on covered policies or contracts less returned premiums,  
12 considerations and deposits ~~returned thereon,~~ and less dividends and experience credits  
13 thereon. "Premiums" does not include ~~any~~ amounts or considerations received for ~~any~~  
14 policies or contracts or for the portions of any policies or contracts for which coverage is  
15 not provided under subsection B of Section 2025 of ~~the Insurance Code~~ this title except  
16 that assessable premium shall not be reduced on account of subparagraph (c) of  
17 paragraph 2 of subsection B of Section 2025 of this title relating to interest limitations  
18 and paragraph 2 of subsection C of Section 2025 of this title relating to limitations with  
19 respect to ~~any one life~~ individual, one participant and one contract owner. Premiums  
20 does not include:

21        a.        premiums on an unallocated annuity contract, or

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

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

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

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

6           15. “Receivership court” means the court in the insolvent or impaired state of the  
7 insurer having jurisdiction over the conservation, rehabilitation or liquidation of the  
8 insurer;

9           ~~12.~~ 16. “Resident” means any a person to whom a contractual obligation is owed  
10 and who resides in this state at the time a member insurer is determined to be an  
11 impaired or insolvent insurer and to whom a contractual obligation is owed on the date of  
12 entry of a court order that determines a member insurer to be an impaired insurer or a  
13 court order that determines a member insurer to be an insolvent insurer. A person may  
14 be a resident of only one state, which in the case of a person other than a natural person  
15 shall be its principal place of business. Citizens of the United States that are either  
16 residents of foreign countries or residents of the United States possessions, territories or  
17 protectorates that do not have an association similar to the Association created by the  
18 Oklahoma Life and Health Insurance Guaranty Association Act, shall be deemed  
19 residents of the state of domicile of the insurer that issued the policy or contract; and

20           ~~13.~~ 17. “State” means a state of the United States, the District of Columbia, Puerto  
21 Rico, or a United States possession, territory or protectorate;







1 Guaranty Association Act shall, except as provided in paragraphs 3 and 4 of this  
2 subsection, provide coverage to a person who is a payee under a structured settlement  
3 annuity or a beneficiary of a payee if the payee is deceased, if the payee:

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

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

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

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

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

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

16 (2) neither the payee nor beneficiary nor the contract owner is  
17 eligible for coverage by the association of the state in which the  
18 payee or contract owner resides;

19 3. The Oklahoma Life and Health Insurance Guaranty Association Act shall not  
20 provide coverage to a person who is a payee or beneficiary of a contract owner resident of  
21 this state, if the payee or beneficiary is afforded coverage by the association of another  
22 state; and

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

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

20           2. This act shall not provide coverage for:

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

- 1           b.    ~~any~~ a policy or contract of reinsurance, unless assumption certificates  
2                            have been issued; pursuant to the reinsurance policy or contract,  
3           c.    ~~any~~ a portion of a policy or contract to the extent that the rate of  
4                            interest on which it is based, or the interest rate, crediting rate or  
5                            similar factor determined by use of an index or other external  
6                            reference stated in the policy or contract employed in calculating  
7                            returns or changes in value:  
8                            (1)    averaged over the period of four (4) years prior to the date on  
9    which the Association becomes obligated with respect to ~~such~~  
10   the policy or contract, exceeds a rate of interest determined by  
11    subtracting two (2) percentage points from Moody's Corporate  
12    Bond Yield Average averaged for that same four-year period or  
13    for such lesser period if the policy or contract was issued less  
14    than four (4) years before the Association became obligated, and  
15                            (2)    on and after the date on which the Association becomes  
16    obligated with respect to ~~such~~ the policy or contract, exceeds the  
17    rate of interest determined by subtracting three (3) percentage  
18    points from Moody's Corporate Bond Yield Average as most  
19    recently available;,  
20           d.    ~~any~~ a portion of a policy or contract issued to a plan or program of an  
21                            employer, association or ~~similar entity~~ other person to provide life,  
22                            health or annuity benefits to its employees ~~or~~, members or others, to

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 the extent that ~~such~~ the plan or program is self-funded or uninsured,  
 2 including but not limited to benefits payable by an employer,  
 3 association or ~~similar entity~~ other person under:

4 (1) a Multiple Employer Welfare Arrangement as defined in ~~Section~~  
 5 ~~514 of the Employee Retirement Income Security Act of 1974, as~~  
 6 ~~amended~~ 29 U.S.C. Section 1144,

7 (2) a minimum premium group insurance plan,  
 8 (3) a stop-loss group insurance plan, or  
 9 (4) an administrative services only contract;

10 e. ~~any~~ a portion of a policy or contract to the extent that it provides for:  
 11 (1) dividends or experience rating credits, ~~or provides that~~  
 12 (2) voting rights, or  
 13 (3) payment of any fees or allowances ~~be paid~~ to any person,  
 14 including the policy or contract ~~holder~~ owner, in connection with  
 15 the service to or administration of ~~such~~ the policy or contract;

16 f. ~~any~~ a policy or contract issued in this state by a member insurer at a  
 17 time when it was not licensed or did not have a certificate of authority  
 18 to issue ~~such~~ the policy or contract in this state;

19 g. ~~any annuity contract or group annuity certificate which is not issued to~~  
 20 ~~and owned by an individual, except to the extent of any annuity~~  
 21 ~~benefits guaranteed to an individual by an insurer under such contract~~  
 22 ~~or certificate; and~~ a portion of a policy or contract to the extent that the

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- 1 assessments required by Section 2030 of this title with respect to the  
2 policy or contract are preempted by federal or state law,  
3 h. ~~any policy or contract issued by those insurers enumerated in Section~~  
4 ~~110 of the Insurance Code~~ an obligation that does not arise under the  
5 express written terms of the policy or contract issued by the insurer to  
6 the contract or policy owner, including without limitation:  
7 (1) claims based on marketing materials,  
8 (2) claims based on side letters, riders or other documents that were  
9 issued by the insurer without meeting applicable policy form  
10 filing or approval requirements,  
11 (3) misrepresentations of or regarding policy benefits,  
12 (4) extra-contractual claims, or  
13 (5) a claim for penalties or consequential or incidental damages,  
14 i. a contractual agreement that establishes the obligations of the member  
15 insurer to provide a book value accounting guaranty for defined  
16 contribution benefit plan participants by reference to a portfolio of  
17 assets that is owned by the benefit plan or its trustee, which in each  
18 case is not an affiliate of the member insurer,  
19 j. an unallocated annuity contract,  
20 k. a portion of a policy or contract to the extent it provides for interest or  
21 other changes in value to be determined by the use of an index or other  
22 external reference stated in the policy or contract, but which have not

1                    been credited to the policy or contract, or as to which the policy or  
2                    contract owner's rights are subject to forfeiture, as of the date the  
3                    member insurer becomes an impaired or insolvent insurer under the  
4                    Oklahoma Life and Health Insurance Guaranty Association Act,  
5                    whichever is earlier. If a policy's or contract's interest or changes in  
6                    value are credited less frequently than annually, then for purposes of  
7                    determining the values that have been credited and are not subject to  
8                    forfeiture under this subparagraph, the interest or change in value  
9                    determined by using the procedures defined in the policy or contract  
10                  will be credited as if the contractual date of crediting interest or  
11                  changing values was the date of impairment or insolvency, whichever  
12                  is earlier, and will not be subject to forfeiture, or  
13                  1. a policy or contract providing any hospital, medical, prescription drug  
14                  or other health care benefits pursuant to Part C or Part D of  
15                  Subchapter XVIII, Chapter 7 of Title 42 of the United States Code,  
16                  commonly known as Medicare Part C or Part D, or any regulations  
17                  issued pursuant thereto.

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

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



1 earner when income is interrupted or terminated because  
2 of illness, sickness or accident, commonly known as  
3 disability insurance and Three Hundred Thousand  
4 Dollars (\$300,000.00) for long-term care insurance as  
5 defined in Section 4424 of this title, and

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21                  C. B. If a member insurer is an insolvent insurer, the Association shall, in its  
22 discretion, either:



1                   (2) with respect to non-group policies, contracts, and annuities not  
2                   later than the earlier of the next renewal date, if any, under the  
3                   policies or contracts for one (1) year, but in no event less than  
4                   thirty (30) days, from the date on which the Association becomes  
5                   obligated with respect to the policies or contracts,  
6                   b.   make diligent efforts to provide all known insureds or annuitants for  
7                   non-group policies and contracts, or group policy owners with respect  
8                   to group policies and contracts, thirty (30) days' notice of the  
9                   termination of the benefits provided pursuant to subparagraph a of  
10                   this paragraph,  
11                   c.   with respect to non-group life and health insurance policies and  
12                   annuities covered by the Association, make available to each known  
13                   insured or annuitant, or owner if other than the insured or annuitant,  
14                   and with respect to an individual formerly insured or formerly an  
15                   annuitant under a group policy who is not eligible for replacement  
16                   group coverage, make available substitute coverage on an individual  
17                   basis in accordance with the provisions of subparagraph d of this  
18                   paragraph, if the insureds or annuitants had a right under law or the  
19                   terminated policy or annuity to convert coverage to individual coverage  
20                   or to continue an individual policy or annuity in force until a specified  
21                   age or for a specified time, during which the insurer had no right

1 unilaterally to make changes in any provision of the policy or annuity  
2 or had a right only to make changes in premium by class.

- 3 d. (1) in providing the substitute coverage required under  
4 subparagraph c of this paragraph, the Association may offer  
5 either to reissue the terminated coverage or to issue an  
6 alternative policy.
- 7 (2) alternative or reissued policies shall be offered without requiring  
8 evidence of insurability, and shall not provide for any waiting  
9 period or exclusion that would not have applied under the  
10 terminated policy, and
- 11 (3) the Association may reinsure any alternative or reissued policy.
- 12 e. (1) alternative policies adopted by the Association shall be subject  
13 to the approval of the domiciliary insurance commissioner and  
14 the receivership court. The Association may adopt alternative  
15 policies of various types for future issuance without regard to  
16 any particular impairment or insolvency.
- 17 (2) alternative policies shall contain at least the minimum statutory  
18 provisions required in this state and provide benefits that shall  
19 not be unreasonable in relation to the premium charged. The  
20 Association shall set the premium in accordance with a table of  
21 rates that it shall adopt. The premium shall reflect the amount  
22 of insurance to be provided and the age and class of risk of each

1                    insured, but shall not reflect any changes in the health of the  
2                    insured after the original policy was last underwritten,  
3                    (3) any alternative policy issued by the Association shall provide  
4                    coverage of a type similar to that of the policy issued by the  
5                    impaired or insolvent insurer, as determined by the Association,  
6                    f. if the Association elects to reissue terminated coverage at a premium  
7                    rate different from that charged under the terminated policy, the  
8                    premium shall be set by the Association in accordance with the amount  
9                    of insurance provided and the age and class of risk, subject to approval  
10                    of the domiciliary insurance commissioner and the receivership court,  
11                    g. the obligations of the Association with respect to coverage under any  
12                    policy of the impaired or insolvent insurer or under any reissued or  
13                    alternative policy shall cease on the date the coverage or policy is  
14                    replaced by another similar policy by the policy owner, the insured or  
15                    the Association,  
16                    h. when proceeding under paragraph 2 of subsection B of this section  
17                    with respect to a policy or contract carrying guaranteed minimum  
18                    interest rates, the Association shall assure the payment or crediting of  
19                    a rate of interest consistent with subparagraph c of paragraph 2 of  
20                    subsection B of Section 2025 of this title.



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

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

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

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

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

18           3. ~~make available substitute coverage on an individual basis to each known~~  
19 ~~insured, or owner if other than the insured, of an individual policy, and to any individual~~  
20 ~~formerly insured under a group policy who is not eligible for replacement group coverage,~~  
21 ~~if the insureds had a right under law or the terminated policy to convert coverage to~~  
22 ~~individual coverage or to continue an individual policy in force until a specified age or for~~

1 a specified time, during which the insurer had no right unilaterally to make changes in  
2 any provision of the policy or had a right only to make changes in premium by class. In  
3 providing said substitute coverage, the Association may offer either to reissue the  
4 terminated coverage or to issue an alternative policy.

5 Alternative or reissued policies shall be offered without requiring evidence of  
6 insurability, and shall not provide for any waiting period or exclusion that would not  
7 have applied under the terminated policy. The Association may reinsure any alternative  
8 or reissued policy.

9 Alternative policies adopted by the Association shall be subject to the approval of  
10 the Commissioner. The Association may adopt alternative policies of various types for  
11 future issuance without regard to any particular impairment or insolvency.

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

18 Any alternative policy issued by the Association shall provide coverage of a type  
19 similar to that of the policy issued by the impaired or insolvent insurer, as determined by  
20 the Association.

21 If the Association elects to reissue terminated coverage at a premium rate different  
22 from that charged under the terminated policy, the premium shall be set by the

1 Association in accordance with the amount of insurance provided and the age and class of  
2 risk, subject to approval of the Commissioner or by a court of competent jurisdiction.

3 ~~The Association's obligations with respect to coverage under any policy of the~~  
4 ~~impaired or insolvent insurer or under any reissued or alternative policy shall cease on~~  
5 ~~the date such coverage or policy is replaced by another similar policy by the policyholder,~~  
6 ~~the insured or the Association.~~

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

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

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

1 Association shall be liable for unearned premiums due to policy or contract owners  
2 arising after the entry of ~~such~~ the order.

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

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

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

17 2. ~~impose~~ Impose temporary moratoriums or liens on payments of cash values and  
18 policy loans, or any other right to withdraw funds held in conjunction with policies or  
19 contracts, in addition to any contractual provisions for deferral of cash or policy loan  
20 value. In addition, in the event of a temporary moratorium or moratorium charge  
21 imposed by the receivership court on payment of cash values or policy loans, or on any  
22 other right to withdraw funds held in conjunction with policies or contracts, out of the

1 assets of the impaired or insolvent insurer, the Association may defer the payment of  
2 cash values, policy loans or other rights by the Association for the period of the  
3 moratorium or moratorium charge imposed by the receivership court, except for claims  
4 covered by the Association to be paid in accordance with a hardship procedure  
5 established by the liquidator or rehabilitator and approved by the receivership court.

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

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

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

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

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

21 ~~M. K.~~ 1. Any person receiving benefits under ~~this act the~~ Oklahoma Life and  
22 Insurance Health Insurance Association Act shall be deemed to have assigned ~~to the~~

1 ~~Association~~ the rights under, and any causes of action against any person for losses  
2 arising under, resulting from or otherwise relating to, the covered policy or contract to  
3 the Association to the extent of the benefits received because of this act, whether the  
4 benefits are payments of or on account of contractual obligations, continuation of  
5 coverage or provision of substitute or alternative coverages. The Association may require  
6 an assignment to it of ~~such~~ the rights and cause of action by any payee, policy or contract  
7 owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any  
8 rights or benefits conferred by this act upon ~~such~~ the person.

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

13       3. ~~The~~ In addition to paragraphs 1 and 2 of this subsection, the Association shall  
14 have all common law rights of subrogation and any other equitable or legal remedy ~~which~~  
15 that would have been available to the impaired or insolvent insurer or ~~holder~~ owner,  
16 beneficiary or payee of a policy or contract with respect to ~~such~~ the policy or contracts,  
17 including without limitation, in the case of a structured settlement annuity, any rights of  
18 the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant  
19 to the Oklahoma Life and Health Insurance Guaranty Association Act, against a person  
20 originally or by succession responsible for the losses arising from the personal injury  
21 relating to the annuity or payment therefore, excepting any person responsible solely by

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 reason of serving as an assignee in respect of a qualified assignment under Internal  
2 Revenue Code Section 130.

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

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

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

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

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

20 3. Borrow money to effect the purposes of the Oklahoma Life and Health Insurance  
21 Guaranty Association Act. Any notes or other evidence of indebtedness of the



1 Association not in default shall be legal investments for domestic insurers and may be  
2 carried as admitted assets;

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

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

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

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

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

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

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

4 N. 1. a. At any time within one hundred eighty (180) days of the date of the  
5 order of liquidation, the Association may elect to succeed to the rights  
6 and obligations of the ceding member insurer that relate to policies or  
7 annuities covered, in whole or in part, by the Association, in each case  
8 under any one or more reinsurance contracts entered into by the  
9 insolvent insurer and its reinsurers and selected by the Association.

10 Any assumption shall be effective as of the date of the order of  
11 liquidation. The election shall be effected by the Association or the  
12 National Organization of Life and Health Insurance Guaranty  
13 Associations (NOLHGA) on its behalf sending written notice, return  
14 receipt requested, to the affected reinsurers.

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

1 notices of any defaults under the reinsurance contracts or any known  
2 event or condition which with the passage of time could become a  
3 default under the reinsurance contracts.

4 c. The requirements provided in this subparagraph shall apply to  
5 reinsurance contracts assumed by the Association:

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

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

1 to the beneficiary under the policy or annuity on account of  
2 which the amounts were paid a portion of the amount equal to  
3 the lesser of:

- 4 (a) the amount received by the Association, or  
5 (b) the excess of the amount received by the Association over  
6 the amount equal to the benefits paid by the Association  
7 on account of the policy or annuity less the retention of  
8 the insurer applicable to the loss or event,

9 (3) within thirty (30) days following the election date of the  
10 Association, the Association and each reinsurer under contracts  
11 assumed by the Association shall calculate the net balance due  
12 to or from the Association under each reinsurance contract as of  
13 the election date with respect to policies or annuities covered, in  
14 whole or in part, by the Association, which calculation shall give  
15 full credit to all items paid by either the insurer or its receiver or  
16 the reinsurer prior to the election date. The reinsurer shall pay  
17 the receiver any amounts due for losses or events prior to the  
18 date of the order of liquidation, subject to any set-off for  
19 premiums unpaid for periods prior to the date, and the  
20 Association or reinsurer shall pay any remaining balance due  
21 the other, in each case within five (5) days of the completion of  
22 the aforementioned calculation. Any disputes over the amounts

1 due to either the Association or the reinsurer shall be resolved  
2 by arbitration pursuant to the terms of the affected reinsurance  
3 contracts or, if the contract contains no arbitration clause, as  
4 otherwise provided by law. If the receiver has received any  
5 amounts due the Association pursuant to division (2) of this  
6 subparagraph, the receiver shall remit the same to the  
7 Association as promptly as practicable, and  
8 (4) if the Association or receiver, on the behalf of the Association,  
9 within sixty (60) days of the election date, pays the unpaid  
10 premiums due for periods both before and after the election date  
11 that relate to policies or annuities covered, in whole or in part,  
12 by the Association, the reinsurer shall not be entitled to  
13 terminate the reinsurance contracts for failure to pay the  
14 premium insofar as the reinsurance contracts relate to policies  
15 or annuities covered, in whole or in part, by the Association, and  
16 shall not be entitled to set off any unpaid amounts due under  
17 other contracts, or unpaid amounts due from parties other than  
18 the Association, against amounts due the Association.

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





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

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

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

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



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

3           a.     a fixed interest rate,

4           b.     payment of dividends with minimum guarantees, or

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

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

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

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

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

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

18           a.     revocation of license,

19           b.     suspension of license, or

20           c.     makes ~~any a~~ formal order that ~~such~~ the company restrict its premium  
21 writing, obtain additional contributions to surplus, withdraw from the  
22 state, reinsure all or any part of its business, or increase capital,

1 surplus or any other account for the security of ~~policyholders~~ policy  
2 owners or creditors.

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

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

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

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

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

5 C. The board of directors may, upon majority vote, make reports and  
6 recommendations to the Commissioner upon any matter germane to the solvency,  
7 liquidation, rehabilitation or conservation of any member insurer or germane to the  
8 solvency of any company seeking to do an insurance business in this state. The reports  
9 and recommendations shall not be considered public documents.

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

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

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

16 Section 2036. A. For the purpose of carrying out its obligations under ~~this act~~ the  
17 Oklahoma Life and Health Insurance Guaranty Association Act, the Oklahoma Life and  
18 Health Insurance Guaranty Association shall be deemed to be a creditor of the impaired  
19 or insolvent insurer to the extent of assets attributable to covered policies reduced by any  
20 amounts to which the Association is entitled as subrogee pursuant to paragraph 8 of  
21 Section 8 2028 of this ~~act~~ title. ~~All assets~~ Assets of the impaired or insolvent insurer  
22 attributable to covered policies shall be used to continue all covered policies and pay all

1 contractual obligations of the impaired or insolvent insurer as required by ~~this act~~ the  
2 Oklahoma Life and Health Insurance Guaranty Association Act. Assets attributable to  
3 covered policies, as used in this subsection, are that proportion of the assets ~~which~~ that  
4 the reserves which should have been established for such policies, bear to the reserves  
5 which should have been established for all policies of insurance written by the impaired  
6 or insolvent insurer.

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

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

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

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

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

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

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

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

13 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND  
14 FINANCIAL SERVICES, dated 03-31-10 - DO PASS.