

THE HOUSE OF REPRESENTATIVES
Thursday, April 01, 2010

ENGROSSED

Senate Bill No. 2044

ENGROSSED SENATE BILL NO. 2044 - By: BROWN of the Senate and SULLIVAN of the House.

An Act relating to insurance; amending 36 O.S. 2001, Sections 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2012, 2016, 2018, as amended by Section 51, Chapter 264, O.S.L. 2006 and 2020 (36 O.S. Supp. 2009, Section 2018), which relate to the Oklahoma Property and Casualty Insurance Guaranty Association Act; provides statutory construction; modifying applicability of the Oklahoma Property and Casualty Insurance Guaranty Association Act; adding and modifying definitions; clarifying legal status of the Oklahoma Property and Casualty Insurance Guaranty Association; clarifying name; modifying powers and duties of the Association; eliminating certain notice; modifying powers and duties of the Insurance Commissioner; modifying recovery process; requiring the Association to file certain statements and estimates; specifying exhaustion of rights; specifying the Commissioner shall make certain examination; deeming certain rates not to be excessive; modifying stay of proceedings; Directs the Association to make effort to coordinate and cooperate with receivers; defining term; specifying when Association is not obligated to pay certain claims; directing the Association to establish certain procedures for requesting certain financial information; specifying burden of proof under certain circumstance; requiring the awarding of certain costs under certain situations; repealing 36 O.S. 2001, Section 2013, which relates to detection and prevention of insurers insolvencies; 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 2002, is amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

3 6. Any transaction or combination of transactions between a person, including
4 affiliates of ~~such~~ the person, and an insurer, including affiliates of ~~such~~ the insurer,
5 which involves the transfer of investment or credit risk unaccompanied by transfer of
6 investment risk.

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

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

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

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

17 3. "Assumed claims transaction" means:

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

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

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

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

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

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

15 ~~4.~~ 5. "Commissioner" means the Insurance Commissioner of ~~Insurance~~ Oklahoma;

16 ~~5.~~ 6. "Control" means the possession, direct or indirect, of the power to direct or
17 cause the direction of the management and policies of a person, whether through the
18 ownership of voting securities, by contract other than a commercial contract for goods or
19 nonmanagement services, or otherwise, unless the power is the result of an official
20 position with or corporate office held by the person. Control shall be presumed to exist if
21 ~~any~~ a person, directly or indirectly, owns, controls, holds with the power to vote, or holds
22 proxies representing ten percent (10%) or more of the voting securities of any other

1 person. This presumption may be rebutted by a showing that control does not exist in
2 fact;

3 ~~6.~~ 7. "Covered claim" means:

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

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

16 (2) the property from which the claim arises is permanently located
17 in this state; ~~or~~

18 b. "Covered claim" shall not include:

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

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

1 (3) any amount due any reinsurer, insurer, insurance pool, or
2 underwriting association, health maintenance organization,
3 hospital plan corporation, professional health service
4 corporation or self-insurer as subrogation recoveries,
5 reinsurance recoveries, contribution, indemnification or
6 otherwise; ~~provided, that a claim for any such amount, asserted~~
7 ~~against a person insured under a policy issued by an insurer~~
8 ~~which has become an insolvent insurer, which, if it were not a~~
9 ~~claim by or for the benefit of a reinsurer, insurer, insurance pool~~
10 ~~or underwriting association, would be a "covered claim" may be~~
11 ~~filed directly with the receiver of the insolvent insurer, but in no~~
12 ~~event may any such claim be asserted in any legal action against~~
13 ~~the insured of such insolvent insurer. "Covered claim" shall not~~
14 ~~include supplementary payment obligations including, but not~~
15 ~~limited to, adjustment fees and expenses, attorneys' fees and~~
16 ~~expenses, court costs, interest and bond premiums incurred~~
17 ~~prior to the determination that an insurer is an insolvent~~
18 ~~insurer under this act. "Covered claim" shall also mean the~~
19 ~~claim of an agent for amounts of unearned premiums advanced~~
20 ~~or paid by such agent on behalf of a policyholder, however,~~
21 ~~payment of such covered claims for unearned premiums~~
22 ~~advanced after the effective date of this section shall be made~~

1 jointly to such agent and policyholder unless an unconditional
2 written assignment has been executed by the policyholder to the
3 agent. No claim for any amount due any reinsurer, insurer,
4 insurance pool, or underwriting association, health maintenance
5 organization, hospital plan corporation, professional health
6 service corporation or self-insurer may be asserted against a
7 person insured under a policy issued by an insolvent insurer
8 other than to the extent the claim exceeds the association
9 obligation limitations set for in Section 2007 of this title,

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

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

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

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

22 (8) any claims for interest, or

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

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

5 8. "Insolvent insurer" means an insurer that is licensed by the Commissioner to
6 transact insurance in this state either at the time the policy was issued, when the
7 obligation with respect to the covered claim was assumed under an assumed claims
8 transaction, or when the insured event occurred and ~~determined to be insolvent and~~
9 ~~ordered liquidated by a court of competent jurisdiction~~ against whom a final order of
10 liquidation has been entered after the effective date of this act with a finding of
11 insolvency by a court of competent jurisdiction in the state of domicile of the insurer;

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

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

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

20 (2) is licensed ~~by the Commissioner~~ to transact insurance in this
21 state, except those insurers enumerated in Section 110 of ~~Title~~

1 ~~36 of the Oklahoma Statutes~~ this title or those insurers that are
2 otherwise exempted by law or order of the Commissioner.

3 b. An insurer shall cease to be a member insurer effective on the day
4 following the termination or expiration of its license to transact the
5 kinds of insurance to which the Oklahoma Property and Casualty
6 Insurance Guaranty Association Act applies; however, the insurer
7 shall be liable as a member insurer for any and all obligations,
8 including but not limited to obligations for assessments levied after the
9 termination or expiration, which relate to any insurer that becomes an
10 insolvent insurer prior to the termination or expiration of the license of
11 the insurer;

12 ~~10. 11.~~ "Net direct written premiums" means direct gross premiums written in this
13 state on insurance policies to which this act applies, including but not limited to policy
14 and membership fees, less the following amounts:

- 15 a. return premiums ~~thereon,~~
16 b. premiums on policies not taken, and
17 c. dividends paid or credited to policyholders on ~~such~~ direct business.

18 "Net direct written premiums" does not include premiums on contracts
19 between insurers or reinsurers; ~~and~~

20 ~~11. 12.~~ "Novation" means that the assumed claim or policy obligations became the
21 direct obligations of the insolvent insurer through consent of the policyholder and that
22 thereafter the ceding insurer or entity initially obligated under the claims or policies is

1 released by the policyholder from performing its claim or policy obligations. Consent
2 shall be express and an implied novation shall not be allowed for the purposes,
3 implementation and application of the Oklahoma Property and Casualty Insurance
4 Guaranty Association Act;

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

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

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

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

17 Section 2005. A. There is hereby created a nonprofit ~~organization, unincorporated~~
18 legal entity to be known as the Oklahoma Property and Casualty Insurance Guaranty
19 Association ~~to effectuate the purposes of the Oklahoma Property and Casualty Insurance~~
20 ~~Guaranty Association Act. The Association shall be administered in accordance with the~~
21 ~~provisions of the Oklahoma Property and Casualty Insurance Guaranty Association Act~~
22 ~~and the board of directors is empowered to do all things necessary to effectuate the~~

1 ~~purposes of the Oklahoma Property and Casualty Insurance Guaranty Association Act~~
2 ~~and to administer the Association.~~ For purposes of administration and assessment, the
3 Association shall be divided into three separate accounts:

- 4 1. The workers' compensation insurance account;
- 5 2. The automobile insurance account; and
- 6 3. The account for all other insurance to which the Oklahoma Property and
7 Casualty Insurance Guaranty Association Act applies.

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

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

15 Section 2006. A. The business and functions of the Oklahoma Property and
16 Casualty Insurance Guaranty Association shall be managed and administered by a board
17 of twelve (12) directors composed of two members selected by the American Insurance
18 Association, who are member insurers; two members selected by the Alliance of
19 American Insurers, who are member insurers; two members selected by the National
20 Association of Independent Insurers, who are member insurers; two Oklahoma domestic
21 insurers, who are member insurers; two nonaffiliated foreign or alien insurers, who are
22 member insurers; two insurance agents who shall serve as ex officio members on the

1 board. One of the ex officio members shall be the Executive Director of the Independent
2 Insurance Agents of Oklahoma, Inc.; the other ex officio member shall be a licensed,
3 resident property and casualty insurance agent chosen by the Governor. Each member of
4 the board of directors shall designate a full-time salaried employee to represent it on the
5 board of directors. Each member except for the ex officio members shall serve for a term
6 of two (2) years. The ex officio member who is appointed by the Governor shall serve at
7 the pleasure of the Governor. The members of the board of directors except for the ex
8 officio members shall be subject to approval by the Commissioner. Vacancies on the
9 board except for the ex officio members shall be filled for the remaining period of the
10 term by a majority vote of the remaining board members, subject to the approval of the
11 Commissioner. If no members are selected and appointed within sixty (60) days after the
12 effective date of this act, the Commissioner may appoint the initial members of the board
13 of directors.

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

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

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

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

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

- 7 a. the full amount of a covered claim for benefits under a workers'
8 compensation insurance coverage,
9 b. an amount not exceeding Ten Thousand Dollars (\$10,000.00) per policy
10 for a covered claim for the return of unearned premium, and
11 c. an amount not exceeding One Hundred Fifty Thousand Dollars
12 (\$150,000.00) per claimant for all other covered claims.

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

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

20 3. Be deemed the insurer to the extent of the obligations on covered claims and to
21 that extent subject to the limitations provided in the Oklahoma Property and Casualty
22 Insurance Guaranty Association Act shall have all rights, duties and obligations of the

1 insolvent insurer as if the insurer had not become insolvent, including but not limited to
2 the right to pursue and retain salvage and subrogation recoverable on covered claim
3 obligations to the extent paid by the association. The association shall not be deemed the
4 insolvent insurer for the purpose of conferring jurisdiction;

5 ~~3.~~ 4. Allocate claims paid and expenses incurred among the three accounts set out
6 in Section 2005 of this title separately, and assess member insurers separately for each
7 account amounts necessary to pay the obligations of the Association under this section
8 subsequent to a member insurer becoming an insolvent insurer, the expenses of handling
9 covered claims subsequent to an insolvency, ~~the cost of examinations under Section 2013~~
10 ~~of this title,~~ and other expenses authorized by the Oklahoma Property and Casualty
11 Insurance Guaranty Association Act, Sections 2001 ~~et seq.~~ through 2020 of this title and
12 Sections 14 and 15 of this act. The assessments of each member insurer shall be in the
13 proportion that the net direct written premiums of the member insurer for the calendar
14 year preceding the assessment on the kinds of insurance in the account bear to the net
15 direct written premiums of all participating insurers for the calendar year preceding the
16 assessment on the kinds of insurance in the account. Each member insurer shall be
17 notified in writing of the assessment not later than thirty (30) days before it is due. No
18 member insurer may be assessed in any year an amount greater than two percent (2%) of
19 the net direct written premiums of that member or one percent (1%) of that ~~member~~
20 ~~insurer's~~ surplus of the member insurer as regards policyholders for the calendar year
21 preceding the assessment on the kinds of insurance in the account, whichever is less. If
22 the maximum assessment, together with the other assets of the Association, does not

1 provide in any one (1) year in any account an amount sufficient to make all necessary
2 payments from that account, the funds available may be prorated and the unpaid portion
3 shall be paid as soon thereafter as funds become available. The Association shall pay
4 claims in any order which it deems reasonable, including the payment of claims as the
5 claims are received from the claimants or in groups or categories of claims. The
6 Association may exempt or defer, in whole or in part, the assessment of any member
7 insurer, if the assessment would cause the ~~member insurer's~~ financial statement of the
8 member insurer to reflect amounts of capital or surplus less than the minimum amounts
9 required for a certificate of authority by any jurisdiction in which the member insurer is
10 authorized to transact insurance. During the period of deferment, no dividends shall be
11 paid to shareholders or policyholders. Deferred assessments shall be paid when ~~such~~ the
12 payments will not reduce capital or surplus below required minimums. ~~Such~~ The
13 payments may be refunded to those companies receiving larger assessments by virtue of
14 ~~such~~ the deferment, or, at the election of any ~~such~~ company credited against future
15 assessments. Each member insurer serving as a servicing facility may set off against
16 any assessment authorized payments made on covered claims and expenses incurred in
17 the payment of ~~such~~ covered claims by ~~such~~ a member insurer if they are chargeable to
18 the account for which the assessment is made;

19 4. 5. Investigate claims brought against the Association and adjust, compromise,
20 settle and pay covered claims to the extent of the obligation of the Association and deny
21 all other claims ~~and may review settlements, releases and judgments on covered claims~~
22 ~~to which the insolvent insurer or its insureds were parties to determine the extent to~~

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

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

9 ~~6.~~

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

15 b. The Association shall have the right to review and contest as set forth
16 in this paragraph, settlements, releases, compromises, waivers and
17 judgments to which the insolvent insurer or its insureds were parties
18 prior to the entry of the order of liquidation. In an action to enforce
19 settlements, releases and judgments to which the insolvent insurer or
20 its insureds were parties prior to the entry of the order of liquidation,
21 the Association shall have the right to assert the following defenses:

- 1 (1) the Association shall not be bound by a settlement, release,
2 compromise or waiver executed by an insured or the insurer, or
3 any judgment entered against the insured or the insurer by
4 consent or through a failure to exhaust all appeals, if the
5 settlement, release, compromise waiver or judgment was:
- 6 (a) executed or entered within one hundred twenty (120) days
7 prior to the entry of an order of liquidation, and the
8 insured or the insurer did not use reasonable care in
9 entering into the settlement, release, compromise, waiver
10 or judgment, or did not pursue all reasonable appeals of
11 an adverse judgment, or
- 12 (b) executed by or taken against an insured or the insurer
13 based on default, fraud, collusion or the failure of the
14 insurer to defend,
- 15 (2) if a court of competent jurisdiction finds that the Association is
16 not bound by a settlement, release, compromise, waiver or
17 judgment for the releases provided for in division (1) of
18 subparagraph b of this paragraph, the settlement, release,
19 compromise, waiver or judgment shall be set aside and the
20 Association shall be permitted to defend any covered claim on
21 the merits. The settlement, release, compromise, waiver or
22 judgment shall not be considered as evidence of liability in

1 connection with any claim brought against the Association or
2 any other party pursuant to the Oklahoma Property and
3 Casualty Insurance Guaranty Association Act, and
4 (3) the Association shall have the right to assert any statutory
5 defenses or rights of offset against any settlement, release,
6 compromise or waiver executed by an insured or the insurer, or
7 any judgment taken against the insured or the insurer.

8 c. As to any covered claims arising from a judgment under any decision,
9 verdict or finding based on the default of the insolvent insurer or its
10 failure to defend, the Association, either on its own behalf or on behalf
11 of an insured, may apply to have the judgment, order, decision, verdict
12 or finding set aside by the same court or administrator that entered
13 the judgment, claim, decision, verdict or finding and shall be permitted
14 to defend on the merits;

15 ~~7. 8.~~ Reimburse each servicing facility for obligations of the Association paid by the
16 facility and for reasonable expenses incurred by the facility while handling claims on
17 behalf of the Association and pay the other expenses of the Association authorized by the
18 Oklahoma Property and Casualty Insurance Guaranty Association Act; and

19 ~~8. 9.~~ Have standing to appear before any court of this state which has jurisdiction
20 over an impaired or insolvent insurer for whom the Association is or may become
21 obligated pursuant to the provisions of the Oklahoma Property and Casualty Insurance
22 Guaranty Association Act. ~~Such standing~~ Standing shall extend to all matters germane

1 to the powers and duties of the Association including, but not limited to, proposals for
2 rehabilitation, acquisition, merger, reinsuring, or guaranteeing the covered policies of the
3 impaired or insolvent insurer, and the determination of covered policies and contractual
4 obligations of the impaired or insolvent insurer.

5 B. The Association may:

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

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

10 3. Sue or be sued;

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

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

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

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

3 8. Intervene as a party in interest in any supervision, conservation, liquidation,
4 rehabilitation, impairment or receivership in which policyholders interests and interests
5 of the Association may be or are affected; and

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

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

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

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

1 Association and approved by the Commissioner. All member insurers shall comply with
2 the plan of operation.

3 C. The plan of operation shall:

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

6 2. Establish procedures for handling assets of the Association;

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

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

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

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

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

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

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

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

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

16 Section 2009. A. The Commissioner shall:

17 1. Notify the Oklahoma Property and Casualty Insurance Guaranty Association of
18 the existence of an insolvent insurer not later than three (3) days after ~~he receives~~ notice
19 of the determination of the insolvency is received. The Association shall be entitled to a
20 copy of a complaint seeking an order of liquidation with a finding of insolvency against a
21 member company at the same time that the complaint is filed with a court of competent
22 jurisdiction; and

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

4 B. The Commissioner may:

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

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

16 ~~3.~~ 2. Revoke the designation of any servicing facility if ~~he~~ the Commissioner finds
17 claims are being handled unsatisfactorily; or

18 3. Examine or audit the Association.

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

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

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

13 B. The Association shall have the right to recover from ~~the following persons the~~
14 amount of any "covered claim" any person who is an affiliate of the insolvent insurer all
15 amounts paid by the Association on behalf of ~~such~~ that person pursuant to the provisions
16 of the Oklahoma Property and Casualty Insurance Guaranty Association Act:

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

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

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

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

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

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

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

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

6 C. Any person having a claim which may be recovered under more than one
7 insurance guaranty association or its equivalent in another state shall seek recovery first
8 from the association of the place of residence of the insured. If it is a first party claim for
9 damage to property with a permanent location, ~~he~~ the person shall seek recovery first
10 from the association of the state where the property is located, and if it is a workers'
11 compensation claim, ~~he~~ the person shall seek recovery first from the association of the
12 residence of the claimant. Any recovery under this act shall be reduced by the amount of
13 recovery from any other insurance guaranty association or its equivalent.

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

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

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

4 Section 2018. Any member insurer who has paid an assessment pursuant to the
5 Oklahoma Property and Casualty Insurance Guaranty Association Act shall include
6 amounts sufficient to recoup a sum equal to the amounts paid to the Oklahoma Property
7 and Casualty Insurance Guaranty Association by the member insurer, less any amounts
8 returned to the member insurer by the Association. ~~Such rates~~ Rates shall not be
9 deemed excessive because they contain an additional amount reasonably calculated to
10 recoup all assessments paid by the member insurer in its next filing for a rate increase or
11 decrease before the Insurance Commissioner.

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

14 Section 2020. All proceedings in which the insolvent insurer, its policyholder, or the
15 Oklahoma Property and Casualty Insurance Guaranty Association is a party in any court
16 in this state shall be stayed ~~one hundred twenty (120) days from the date an order of~~
17 ~~liquidation, rehabilitation, receivership or conservatorship is final to permit proper legal~~
18 ~~action by the Association on any matters germane to its powers and duties. As to~~
19 ~~judgment under any decision, order, verdict or finding based on default, the Association~~
20 ~~may apply to have such judgment set aside by the same court that made such judgment~~
21 ~~and shall be permitted to defend against such suit on the merits~~ six (6) months and
22 additional time may be determined by the court from the date when insolvency is

1 determined or an ancillary proceeding is instituted in the state, whichever is later, to
2 permit proper defense by the association of all pending causes of action. The liquidator,
3 receiver or statutory successor of an insolvent insurer covered by this act shall permit the
4 board or its authorized representative access to the records of the insolvent insurer as
5 are necessary to the board in carrying out its functions under this act with regard to the
6 covered claims. In addition, the liquidator, receiver or statutory successor shall provide
7 the board or its representative with copies of those records upon the request of the board
8 and at the expense of the board.

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

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

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

21 A. For purposes of this section, “high net worth insured” means any insured whose
22 net worth exceeds Fifty Million Dollars (\$50,000,000.00) on December 31 of the year prior

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

1 to the year in which the insurer becomes an insolvent insurer; provided that the net
2 worth of an insured on that date shall be deemed to include the aggregate net worth of
3 the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis.

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

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

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

14 D. The Association shall establish reasonable procedures for requesting financial
15 information from insureds on a confidential basis for purposes of applying this section,
16 provided that the financial information may be shared with any other association similar
17 to the association and the liquidator for the insolvent insurer on the same confidential
18 basis. Any request to an insured seeking financial information shall advise the insured
19 of the consequences of failing to provide the financial information. If an insured refuses
20 to provide the requested financial information where it is requested and available, the
21 Association may, until the time as the information is provided, provisionally deem the

1 insured to be a high net worth insured for the purpose of denying a claim under
2 subsection B of this section.

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

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

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

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