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THE STATE SENATE  
Monday, February 22, 2010

Committee Substitute for  
Senate Bill No. 2043

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2043 - By: Brown of the Senate and Sullivan of the House.

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

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

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

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

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

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

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

4. "Contractual obligation" means ~~any~~ an obligation under a policy or contract or certificate under a group policy or contract,

1 or portion thereof for which coverage is provided under Section 2025  
2 of ~~the Insurance Code~~ this title;

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

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

9 7. "Impaired insurer" means a member insurer which, after the  
10 effective date of this act, is not an insolvent insurer and:

- 11 a. ~~is deemed by the Commissioner to be potentially unable~~
- 12 ~~to fulfill its contractual obligations; or~~
- 13 b. is placed under an order of rehabilitation or
- 14 conservation by a court of competent jurisdiction;

15 ~~7.~~ 8. "Insolvent insurer" means a member insurer which, after  
16 the effective date of this act, is placed under an order of  
17 liquidation by a court of competent jurisdiction with a finding of  
18 insolvency;

19 ~~8.~~ 9. "Member insurer" means any nonprofit hospital service and  
20 medical indemnity corporation and any insurer licensed or ~~which~~ that  
21 holds a certificate of authority to transact in this state any kind  
22 of insurance for which coverage is provided under Section 2025 of  
23 ~~the Insurance Code~~ this title, and includes any insurer whose

1 license or certificate of authority in this state may have been  
2 suspended, revoked, not renewed or voluntarily withdrawn, but does  
3 not include:

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

14 ~~9-~~ 10. "Moody's Corporate Bond Yield Average" means the Monthly  
15 Average Corporates as published by Moody's Investors Service, Inc.,  
16 or any successor thereto;

17 ~~10-~~ 11. "Owner, "policy owner" or "contract owner" means the  
18 person who is identified as the legal owner of a policy or contract  
19 under the terms of the policy or contract or who is otherwise vested  
20 with legal title to the policy or contract through a valid  
21 assignment completed in accordance with the terms of the policy or  
22 contract and properly recorded as the owner on the books of the

1 insurer. Owner, policy owner or contract owner does not include  
2 persons with a mere beneficial interest in a policy or contract;

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

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

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

- 20 a. premiums on an unallocated annuity contract, or  
21 b. premiums in excess of Five Million Dollars  
22 (\$5,000,000.00) on multiple non-group policies of life  
23 insurance owned by one owner, whether the policy owner

1 is an individual, firm, corporation, or other person,  
2 and whether the persons insured are officers,  
3 managers, employees or other persons, regardless of  
4 the number of policies or contracts held by the owner;

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

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

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

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

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

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

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

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

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

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

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

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

22 1. a. ~~to~~ To persons, who regardless of where they reside,  
23 except for nonresident certificate holders under group

1 policies or contracts, are the beneficiaries,  
2 assignees or payees of the persons covered under  
3 subparagraph b of this paragraph,

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

7 ~~a.~~

8 (1) are residents, or

9 ~~b.~~

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

12 ~~(1)~~

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

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

19 ~~(3) such~~

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

1           ~~(4) such the~~ persons are not eligible for coverage by  
2           ~~such other states' associations~~ an association in  
3           any other state due to the fact that the insurer  
4           was not licensed in the state at the time  
5           specified in the guaranty association law of the  
6           state; and

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

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

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

22           (1) (a) the contract owner of the structured  
23           settlement annuity is a resident, or

1                   **(b) the contract owner of the structured**  
2                   **settlement annuity is not a resident but:**  
3                   **i. the insurer that issued the structured**  
4                   **settlement annuity is domiciled in this**  
5                   **state, and**  
6                   **ii. the state in which the contract owner**  
7                   **resides has an association similar to**  
8                   **the association created by the Oklahoma**  
9                   **Life and Health Insurance Guaranty**  
10                   **Association Act, and**

11                   **(2) neither the payee nor beneficiary nor the**  
12                   **contract owner is eligible for coverage by the**  
13                   **association of the state in which the payee or**  
14                   **contract owner resides;**

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

20                   **4. The Oklahoma Life and Health Insurance Guaranty Association**  
21 **Act is intended to provide coverage to a person who is a resident of**  
22 **this state and in special circumstances, to a nonresident. In order**  
23 **to avoid duplicate coverage, if a person who would otherwise receive**

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

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

21 2. This act shall not provide coverage for:

- 1 a. ~~any~~ a portion of a policy or contract not guaranteed  
2 by the insurer, or under which the risk is borne by  
3 the policy or contract ~~holder,~~ owner,
- 4 b. ~~any~~ a policy or contract of reinsurance, unless  
5 assumption certificates have been issued, pursuant to  
6 the reinsurance policy or contract,
- 7 c. ~~any~~ a portion of a policy or contract to the extent  
8 that the rate of interest on which it is based, or the  
9 interest rate, crediting rate or similar factor  
10 determined by use of an index or other external  
11 reference stated in the policy or contract employed in  
12 calculating returns or changes in value:
- 13 (1) averaged over the period of four (4) years prior  
14 to the date on which the Association becomes  
15 obligated with respect to ~~such~~ the policy or  
16 contract, exceeds a rate of interest determined  
17 by subtracting two (2) percentage points from  
18 Moody's Corporate Bond Yield Average averaged for  
19 that same four-year period or for such lesser  
20 period if the policy or contract was issued less  
21 than four (4) years before the Association became  
22 obligated, and

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

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

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

19 (2) a minimum premium group insurance plan,

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

21 (4) an administrative services only contract;

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

- 1                    (1) dividends or experience rating credits, or  
2                    ~~provides that~~
- 3                    (2) voting rights, or
- 4                    (3) payment of any fees or allowances ~~be paid~~ to any  
5                    person, including the policy or contract ~~holder~~  
6                    owner, in connection with the service to or  
7                    administration of ~~such~~ the policy or contract~~,~~  
8                    f. ~~any~~ a policy or contract issued in this state by a  
9                    member insurer at a time when it was not licensed or  
10                   did not have a certificate of authority to issue ~~such~~  
11                   the policy or contract in this state~~,~~  
12                   g. ~~any annuity contract or group annuity certificate~~  
13                   ~~which is not issued to and owned by an individual,~~  
14                   ~~except to the extent of any annuity benefits~~  
15                   ~~guaranteed to an individual by an insurer under such~~  
16                   ~~contract or certificate; and~~ a portion of a policy or  
17                   contract to the extent that the assessments required  
18                   by Section 2030 of this title with respect to the  
19                   policy or contract are preempted by federal or state  
20                   law,  
21                   h. ~~any policy or contract issued by those insurers~~  
22                   ~~enumerated in Section 110 of the Insurance Code~~ an  
23                   obligation that does not arise under the express

1 written terms of the policy or contract issued by the  
2 insurer to the contract or policy owner, including  
3 without limitation:

4 (1) claims based on marketing materials,

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

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

11 (4) extra-contractual claims, or

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

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

21 j. an unallocated annuity contract,

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

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

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

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

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

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

10           ~~a.~~

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

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

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

22                   (2) in health insurance benefits:

1                   (a) One Hundred Thousand Dollars (\$100,000.00)  
2                   for coverages not defined as disability  
3                   insurance or basic hospital, medical and  
4                   surgical insurance or major medical  
5                   insurance or long-term care insurance as  
6                   defined in Section 4424 of this title,  
7                   including any net cash surrender and net  
8                   cash withdrawal values,

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

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

1                   (3) Three Hundred Thousand Dollars (\$300,000.00) in  
2                   the present value of annuity benefits, including  
3                   net cash surrender and net cash withdrawal  
4                   values, or  
5           b. with respect to each payee of a structured settlement  
6           annuity or beneficiary or beneficiaries of the payee  
7           if the payee is deceased, Three Hundred Thousand  
8           Dollars (\$300,000.00) in present value annuity  
9           benefits, in the aggregate, including net cash  
10           surrender and net cash withdrawal values,  
11           c. however, ~~that~~ in no event shall the Association be  
12           liable obligated to expend cover more than:  
13                   (1) an aggregate of Three Hundred Thousand Dollars  
14                   (\$300,000.00) in ~~the aggregate~~ benefits with  
15                   respect to any one life under this subparagraph  
16                   and subparagraphs a, and b and e of this  
17                   subparagraph paragraph except with respect to  
18                   benefits for basic hospital, medical and surgical  
19                   insurance and major medical insurance under  
20                   division (2) of subparagraph a of this paragraph,  
21                   in which case the aggregate liability of the  
22                   Association shall not exceed Five Hundred

1                    Thousand Dollars (\$500,000.00) with respect to  
2                    any one individual, or  
3                    (2) with respect to one owner of multiple non-group  
4                    policies of life insurance, whether the policy  
5                    owner is an individual, firm, corporation or  
6                    other person, and whether the persons insured  
7                    are officers, managers, employees or other  
8                    persons, more than Five Million Dollars  
9                    (\$5,000,000.00) in benefits, regardless of the  
10                   number of policies and contracts held by the  
11                   owner,

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

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

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

18           Section 2028. A. If a member insurer is an impaired ~~domestic~~  
19 insurer, the Oklahoma Life and Health Insurance Guaranty Association  
20 may, in its discretion, and subject to any conditions imposed by the  
21 Association that do not impair the contractual obligations of the  
22 impaired insurer, and that are approved by the Commissioner, ~~and~~

1 ~~that are, except in cases of court-ordered conservation or~~  
2 ~~rehabilitation, also approved by the impaired insurer:~~

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

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

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

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

17 a. ~~take any of the actions specified in subsection A of~~  
18 ~~this section, subject to the conditions therein, or~~  
19 b. ~~provide substitute benefits in lieu of the contractual~~  
20 ~~obligations of the impaired insurer solely for: health~~  
21 ~~claims; periodic annuity benefit payments; death~~  
22 ~~benefits; supplemental benefits; and cash withdrawals~~  
23 ~~for policy or contract owners who petition therefor~~

1                   ~~under claims of emergency or hardship in accordance~~  
2                   ~~with standards proposed by the Association and~~  
3                   ~~approved by the Commissioner.~~

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

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

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

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

11                   ~~(3) for which a petition for rehabilitation or~~  
12                   ~~liquidation has been filed in a court of~~  
13                   ~~competent jurisdiction in the insurer's state of~~  
14                   ~~domicile by the Insurance Commissioner of that~~  
15                   ~~state, and~~

16                   ~~(4) the laws of the impaired insurer's state of~~  
17                   ~~domicile provide that until all payments of or on~~  
18                   ~~account of the impaired insurer's contractual~~  
19                   ~~obligations by all guaranty associations, along~~  
20                   ~~with all expenses thereof and interest on all~~  
21                   ~~such payments and expenses, shall have been~~  
22                   ~~repaid to the guaranty associations or a plan of~~

1                   ~~repayment by the impaired insurer shall have been~~  
2                   ~~approved by the guaranty associations, and~~  
3                   ~~(5) the delinquency proceeding shall not be~~  
4                   ~~dismissed, and~~  
5                   ~~(6) neither the impaired insurer nor its assets shall~~  
6                   ~~be returned to the control of its shareholders or~~  
7                   ~~private management, and~~  
8                   ~~(7) it shall not be permitted to solicit or accept~~  
9                   ~~new business or have any suspended or revoked~~  
10                   ~~license restored; or~~

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

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

16           1.   a.   (1) guarantee, assume or reinsure, or cause to be  
17                   guaranteed, assumed or reinsured, the policies or  
18                   contracts of the insolvent insurer,    or

19           ~~2.~~

20                   (2) assure payment of the contractual obligations of  
21                   the insolvent insurer,    and



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

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

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

1 an individual policy or annuity in force until a  
2 specified age or for a specified time, during which  
3 the insurer had no right unilaterally to make changes  
4 in any provision of the policy or annuity or had a  
5 right only to make changes in premium by class,

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

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

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

18 e. (1) alternative policies adopted by the Association  
19 shall be subject to the approval of the  
20 domiciliary insurance commissioner and the  
21 receivership court. The Association may adopt  
22 alternative policies of various types for future

1                   issuance without regard to any particular  
2                   impairment or insolvency,

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

14           (3) any alternative policy issued by the Association  
15           shall provide coverage of a type similar to that  
16           of the policy issued by the impaired or insolvent  
17           insurer, as determined by the Association,

18           f. if the Association elects to reissue terminated  
19           coverage at a premium rate different from that charged  
20           under the terminated policy, the premium shall be set  
21           by the Association in accordance with the amount of  
22           insurance provided and the age and class of risk,

1                   subject to approval of the domiciliary insurance  
2                   commissioner and the receivership court,  
3           g.   the obligations of the Association with respect to  
4                   coverage under any policy of the impaired or insolvent  
5                   insurer or under any reissued or alternative policy  
6                   shall cease on the date the coverage or policy is  
7                   replaced by another similar policy by the policy  
8                   owner, the insured or the Association,  
9           h.   when proceeding under paragraph 2 of subsection B of  
10                   this section with respect to a policy or contract  
11                   carrying guaranteed minimum interest rates, the  
12                   Association shall assure the payment or crediting of a  
13                   rate of interest consistent with subparagraph c of  
14                   paragraph 2 of subsection B of Section 2025 of this  
15                   title.

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

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

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

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

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

16           ~~3. make available substitute coverage on an individual basis to~~  
17           ~~each known insured, or owner if other than the insured, of an~~  
18           ~~individual policy, and to any individual formerly insured under a~~  
19           ~~group policy who is not eligible for replacement group coverage, if~~  
20           ~~the insureds had a right under law or the terminated policy to~~  
21           ~~convert coverage to individual coverage or to continue an individual~~  
22           ~~policy in force until a specified age or for a specified time,~~  
23           ~~during which the insurer had no right unilaterally to make changes~~

1 ~~in any provision of the policy or had a right only to make changes~~  
2 ~~in premium by class. In providing said substitute coverage, the~~  
3 ~~Association may offer either to reissue the terminated coverage or~~  
4 ~~to issue an alternative policy.~~

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

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

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

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

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

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

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

21       ~~F.~~ C. Nonpayment of premiums within thirty-one (31) days after  
22 the date required under the terms of any guaranteed, assumed,  
23 alternative or reissued policy or contract or substitute coverage

1 shall terminate the Association's obligations under ~~such~~ the policy  
2 or coverage under ~~this act~~ the Oklahoma Life and Health Insurance  
3 Guaranty Association Act with respect to ~~such~~ the policy or  
4 coverage, except with respect to any claims incurred or any net cash  
5 surrender value which may be due in accordance with the provisions  
6 of this act.

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

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

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

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

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

1 be paid in accordance with a hardship procedure established by the  
2 liquidator or rehabilitator and approved by the receivership court.

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

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

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

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

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

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

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

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

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

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

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

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

1 of the recovery attributable to the policies, or portion thereof,  
2 covered by the Association.

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

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

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

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

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

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

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

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

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

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

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

21       N. 1. a. At any time within one hundred eighty (180) days of  
22 the date of the order of liquidation, the Association  
23 may elect to succeed to the rights and obligations of

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

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

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

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

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

22           (2) the Association shall be entitled to any amounts  
23           payable by the reinsurer under the reinsurance

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

- 11 (a) the amount received by the Association; or  
12 (b) the excess of the amount received by the  
13 Association over the amount equal to the  
14 benefits paid by the Association on account  
15 of the policy or annuity less the retention  
16 of the insurer applicable to the loss or  
17 event,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18          6. Except as otherwise provided in this section, nothing in  
19          this subsection shall alter or modify the terms and conditions of  
20          any reinsurance contract. Nothing in this section shall abrogate or  
21          limit any rights of any reinsurer to claim that it is entitled to  
22          rescind a reinsurance contract. Nothing in this section shall give  
23          a policyholder or beneficiary an independent cause of action against

1 a reinsurer that is not otherwise set forth in the reinsurance  
2 contract. Nothing in this section shall limit or affect the rights  
3 of the Association as a creditor of the estate against the assets of  
4 the state. Nothing in this section shall apply to reinsurance  
5 agreements covering property or casualty risks.

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

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

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

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

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

13           a. a fixed interest rate,

14           b. payment of dividends with minimum guarantees, or

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

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

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

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

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

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

8 a. revocation of license,

9 b. suspension of license, or

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

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

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

1 directors shall contain all significant details of the action taken  
2 or the report received from a commissioner from another state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 SECTION 8. REPEALER 36 O.S. 2001, Sections 2029 and  
20 2033, are hereby repealed.

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

22 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated  
23 2-18-10 - DO PASS, As Amended and Coauthored.