FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3746

Of the printed Bill

Page 27 Section ______ Lines 18 ½

Of the Engrossed Bill

On page 27, line 18 ½, by inserting a new Section 11 with the following language:

(and by renumbering subsequent sections)

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Lewis Moore

Adopted: ______________________________

____
Reading Clerk

"SECTION 11. AMENDATORY 36 O.S. 2011, Section 2007, is amended to read as follows:

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

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

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

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

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

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

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

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

4. Allocate claims paid and expenses incurred among the three accounts set out in Section 2005 of this title separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the Association under this section subsequent to a member insurer becoming an insolvent insurer, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by the Oklahoma Property and Casualty Insurance Guaranty Association Act, Sections 2001 through 2020 of this title and Sections 14 and 15 of this act. The assessments of

each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bear to the net direct written premiums of all participating insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified in writing of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of the net direct written premiums of that member or one percent (1%) of that surplus of the member insurer as regards policyholders for the calendar year preceding the assessment on the kinds of insurance in the account, whichever is less. If the maximum assessment, together with the other assets of the Association, does not provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association shall pay claims in any order which it deems reasonable, including the payment of claims as the claims are received from the claimants or in groups or categories of claims. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the financial statement of the member insurer to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. During the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payments will not reduce capital or surplus below required minimums. The payments may be refunded to those companies receiving larger assessments by virtue of the deferment, or, at the election of any company credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of covered claims by a member insurer if they are chargeable to the account for which the assessment is made;

5. Investigate claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the obligation of the Association and deny all other claims. The Association shall pay claims in any order that it may deem reasonable, including, but not limited to, the payment of claims as they are received from claimants or in groups of categories of claims. The Association shall have the right to select and to direct legal counsel under liability insurance policies for the defense of covered claims;

6. Notify claimants in this state as deemed necessary by the Commissioner and upon the request of the Commissioner, to the extent records are available to the Association;

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

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

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

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

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

(2) if a court of competent jurisdiction finds that the Association is not bound by a settlement, release, compromise, waiver or judgment for the releases provided for in division (1) of subparagraph b of this paragraph, the settlement, release, compromise, waiver or judgment shall be set aside and the Association shall be permitted to defend any covered claim on the merits. The settlement, release, compromise, waiver or judgment shall not be considered as evidence of liability in connection with any claim brought against the Association or any other party

pursuant to the Oklahoma Property and Casualty Insurance Guaranty Association Act, and

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

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

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

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

B. The Association may:

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

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

3. Sue or be sued;

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

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

exceed the liabilities as estimated by the board of directors for the coming year;

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

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

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

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

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