An Act

ENROLLED SENATE
BILL NO. 2043

By: Brown of the Senate

and

Sullivan of the House

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

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

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

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

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

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

~~a. is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations; or~~

~~b.~~ is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

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

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

a. ~~A~~ a health maintenance organization~~;~~,

b. ~~A~~ a fraternal benefit society~~;~~,

c. ~~A~~ a mandatory state-pooling plan~~;~~,

d. ~~A~~ a mutual assessment company or ~~any entity~~ other person that operates on an assessment basis~~;~~,

e. ~~An~~ an insurance exchange~~; or~~,

f. ~~Any~~ an organization that has a certificate or license limited to the issuance of charitable gift annuities under Sections 4071 through 4082 of this title, or

g. any entity similar to any of the above;

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

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

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

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

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

a. premiums on an unallocated annuity contract, or

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

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

a. the state in which the primary executive and administrative headquarters of the entity are located,

b. the state in which the principal office of the chief executive officer of the entity is located,

c. the state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings,

d. the state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings,

e. the state from which the management of the overall operations of the entity is directed, and

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

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

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

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

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

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

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

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

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

1. a. ~~to~~ To persons, who regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons covered under subparagraph b of this paragraph,

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

~~a.~~

(1) are residents, or

~~b.~~

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

~~(1)~~

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

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

~~(3) such~~

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

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

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

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

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

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

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

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

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

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

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

4. The Oklahoma Life and Health Insurance Guaranty Association Act is intended to provide coverage to a person who is a resident of this state and in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under the Oklahoma Life and Health Insurance Guaranty Association Act is provided coverage under the laws of any other state, the person shall not be provided coverage under the Oklahoma Life and Health Insurance Guaranty Association Act. In determining the application of the provisions of this paragraph to situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary or assignee, the Oklahoma Life and Health Insurance Association Act shall be

construed in conjunction with the laws of other states to result in coverage by only one association.

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

2. This act shall not provide coverage for:

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

b. ~~any~~ a policy or contract of reinsurance, unless assumption certificates have been issued~~,~~ pursuant to the reinsurance policy or contract,

c. ~~any~~ a portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(1) averaged over the period of four (4) years prior to the date on which the Association becomes obligated with respect to ~~such~~ the policy or contract, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four (4) years before the Association became obligated, and

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

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

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

(2) a minimum premium group insurance plan,

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

(4) an administrative services only contract;

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

(1) dividends or experience rating credits, ~~or provides that~~

(2) voting rights, or

(3) payment of any fees or allowances ~~be paid~~ to any person, including the policy or contract ~~holder~~ owner, in connection with the service to or administration of ~~such~~ the policy or contract~~;~~,

f. ~~any~~ a policy or contract issued in this state by a member insurer at a time when it was not licensed or

did not have a certificate of authority to issue ~~such~~ the policy or contract in this state~~;~~,

g. ~~any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate; and~~ a portion of a policy or contract to the extent that the assessments required by Section 2030 of this title with respect to the policy or contract are preempted by federal or state law,

h. ~~any policy or contract issued by those insurers enumerated in Section 110 of the Insurance Code~~ an obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract or policy owner, including without limitation:

(1) claims based on marketing materials,

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

(3) misrepresentations of or regarding policy benefits,

(4) extra-contractual claims, or

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

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

j. an unallocated annuity contract,

k. a portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under the Oklahoma Life and Health Insurance Guaranty Association Act, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subparagraph, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture, or

l. a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly known as Medicare Part C or Part D, or any regulations issued pursuant thereto.

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

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

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

~~a.~~

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

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

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

(2) in health insurance benefits:

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

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

(c) Five Hundred Thousand Dollars ($500,000.00) for basic hospital, medical and surgical insurance or insurance providing coverage in excess of that provided by a basic hospital,

medical and surgical insurance, commonly known as major medical insurance, or

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

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

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

(1) an aggregate of Three Hundred Thousand Dollars ($300,000.00) in ~~the aggregate~~ benefits with respect to any one life under this subparagraph and subparagraphs a~~,~~ and b ~~and c~~ of this ~~subparagraph~~ paragraph except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance under division (2) of subparagraph a of this paragraph, in which case the aggregate liability of the Association shall not exceed Five Hundred Thousand Dollars ($500,000.00) with respect to any one individual, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(5) the delinquency proceeding shall not be dismissed, and~~

~~(6) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management, and~~

~~(7) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; or~~

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

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

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

~~2.~~

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

b. provide ~~such~~ monies, pledges, loans, notes, guarantees or other means as are reasonably necessary to discharge ~~such~~ the duties of the Association; or

2. Provide benefits and coverages in accordance with the following provisions:

~~3.~~

a. with respect to life and health insurance policies ~~only, provide~~ and annuities, assure payment of benefits ~~and coverages in accordance with subsection D of this section~~ for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for claims incurred:

(1) with respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the Association becomes obligated with respect to the policies and contracts, or

(2) with respect to non-group policies, contracts, and annuities not later than the earlier of the next renewal date, if any, under the policies or contracts for one (1) year, but in no event less than thirty (30) days, from the date on which the Association becomes obligated with respect to the policies or contracts,

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

c. with respect to non-group life and health insurance policies and annuities covered by the Association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph d of this paragraph, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class,

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

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

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

e. (1) alternative policies adopted by the Association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The Association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency,

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

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

f. if the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the Association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court,

g. the obligations of the Association with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured or the Association,

h. when proceeding under paragraph 2 of subsection B of this section with respect to a policy or contact carrying guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with subparagraph c of paragraph 2 of subsection B of Section 2025 of this title.

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

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

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

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

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

~~3. make available substitute coverage on an individual basis to each known insured, or owner if other than the insured, of an individual policy, and to any individual formerly insured under a group policy who is not eligible for replacement group coverage, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class. In providing said substitute coverage, the Association may offer either to reissue the terminated coverage or to issue an alternative policy.~~

~~Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any~~

~~waiting period or exclusion that would not have applied under the terminated policy. The Association may reinsure any alternative or reissued policy.~~

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

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

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

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

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

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

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

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

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

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

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

2. ~~impose~~ Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds

held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the Association may defer the payment of cash values, policy loans or other rights by the Association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the Association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

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

~~J.~~ H. If the Association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in ~~subsections~~ subsection B~~, C and D~~ of this section, the Commissioner shall have the powers and duties of the Association under ~~this act~~ the Oklahoma Life and Health Insurance Guaranty Association Act with respect to ~~impaired or~~ the insolvent ~~insurers~~ insurer;

~~K.~~ I. The Association may render assistance and advice to the Commissioner, upon ~~his~~ the request of the Commissioner, concerning rehabilitation, payment of claims, continuance of coverage, or the

performance of other contractual obligations of ~~any~~ an impaired or insolvent insurer;

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

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

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

3. ~~The~~ In addition to paragraphs 1 and 2 of this subsection, the Association shall have all common law rights of subrogation and any other equitable or legal remedy ~~which~~ that would have been available to the impaired or insolvent insurer or ~~holder~~ owner, beneficiary or payee of a policy or contract with respect to ~~such~~ the policy or contracts, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to the Oklahoma Life and Health Insurance Guaranty Association Act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefore, excepting any person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Internal Revenue Code Section 130.

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

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

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

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

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

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

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

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

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

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

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

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

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

N. 1. a. At any time within one hundred eighty (180) days of the date of the order of liquidation, the Association

may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the Association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

b. To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings, copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether the contracts should be assumed, and notices of any defaults under the reinsurance contacts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

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

(1) the Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the Association. The Association may

charge policies or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator,

(2) the Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any of these amounts, the Association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(a) the amount received by the Association, or

(b) the excess of the amount received by the Association over the amount equal to the benefits paid by the Association on account of the policy or annuity less the retention of the insurer applicable to the loss or event,

(3) within thirty (30) days following the election date of the Association, the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation,

subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to division (2) of this subparagraph, the receiver shall remit the same to the Association as promptly as practicable, and

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

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

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

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

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

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

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

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

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

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

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

5. The provisions of this subsection shall govern any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in

periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

6. Except as otherwise provided in this section, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the rights of the Association as a creditor of the estate against the assets of the state. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

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

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

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

R. In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under subsection A or B

of this section, the Association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

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

a. a fixed interest rate,

b. payment of dividends with minimum guarantees, or

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

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

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

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

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

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

a. revocation of license,

b. suspension of license, or

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

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

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

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

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

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

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

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

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

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

Section 2036. A. For the purpose of carrying out its obligations under ~~this act~~ the Oklahoma Life and Health Insurance Guaranty Association Act, the Oklahoma Life and Health Insurance Guaranty Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to ~~paragraph 8~~ subsection K of Section ~~8~~ 2028 of this ~~act~~ title. ~~All assets~~ Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by ~~this act~~ the Oklahoma Life and Health Insurance Guaranty Association Act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets ~~which~~ that the reserves which should have been established for such policies, bear to the reserves which should have been established for all policies of insurance written by the impaired or insolvent insurer.

B. As a creditor of the impaired or insolvent insurer as established in subsection A of this section and consistent with Section 1927.1 of this title, the Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual

obligations under this act. If the liquidator has not, within one hundred twenty (120) days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

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

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

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

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

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

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

Passed the Senate the 8th day of March, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 14th **day of** April, 2010, **at** 2:40 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 19th **day of** April, 2010, **at** 4:20 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 20th **day of** April, 2010, **at** 3:08 **o'clock** P **M.**

By: