# An Act

ENROLLED SENATE
BILL NO. 697

By: Brinkley of the Senate

and

Mulready of the House

An Act relating to insurance; amending 36 O.S. 2011, Section 1904, which relates to injunctions; modifying provisions and agreements for Federal Home Loan Banks; amending 36 O.S. 2011, Section 1922, which relates to the power and authority of the receiver; modifying powers within a security agreement; amending 36 O.S. 2011, Section 1926, which relates to fraudulent transfers or transactions; clarifying responsibilities for security agreements; and declaring an emergency.

SUBJECT: Federal Home Loan Bank procedures

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1904, is amended to read as follows:

Section 1904. A. Upon application by the Insurance Commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons for the transaction of its business or the waste or disposition of its property until the further order of the court. Notwithstanding the foregoing, or any other provision of this chapter, no Federal Home Loan Bank shall be stayed, enjoined, or prohibited from exercising

or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement.

B. The court may at any time during a proceeding under this article issue such other injunctions or orders as may be deemed necessary to prevent interference with the Insurance Commissioner or the proceedings, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

C. Notwithstanding any other provision of law, no bond shall be required of the Insurance Commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

D. Nothing in this section shall deprive a party in interest of any contractual right to pursue arbitration of any dispute under any law, and venue shall be as provided in subsection B of Section 1902 of this title.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 1922, is amended to read as follows:

Section 1922. A. The receiver shall have the power:

1. To hold hearings, to subpoena witnesses for the purpose of compelling their attendance, to administer oaths, to examine any person under oath, and to compel any persons to subscribe to their testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, data or other documents, electronic or paper, that the receiver deems relevant to the inquiry;

2. To audit the books and records of all agents of the insurer, including, but not limited to, third-party administrators, and affiliated and nonaffiliated management companies insofar as those records relate to the business activities of the insurer;

3. To conduct litigation, including:

a. to continue to prosecute or defend, and to institute in the name of the insurer or in the receiver's own name, suits or other legal proceedings, in this state or elsewhere,

b. to abandon the prosecution of claims the receiver deems unprofitable to pursue further,

c. to collect all debts and monies due and claims belonging to the insurer, wherever located, and in furtherance of this purpose to institute action in this or other jurisdictions in order to forestall garnishment and attachment proceedings against those debts, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the receiver deems consistent with the purpose of the Uniform Insurers Liquidation Act, and pursue any creditor's remedies available to enforce the insurer's claims,

d. to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition for supervision, conservation, receivership, rehabilitation or liquidation has been filed shall not bind the receiver. Whenever a guaranty association has an obligation to defend any suit, the receiver shall defer to that obligation and may defend only in cooperation with the guaranty association or in the absence of the guaranty association's defense,

e. to exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer, transaction or lien that may be avoidable under the Uniform Insurers Liquidation Act or otherwise, and

f. to intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee for the insurer or any of its property, and to act as the receiver or trustee whenever the appointment is offered.

The receiver shall have exclusive standing in any action that may exist to assert claims or defenses on behalf of the creditors, members, policyholders or shareholders of the insurer or the public against any person, except to the extent that a claim is personal to a specific creditor, member, policyholder or shareholder and recovery on the claim would not inure to the benefit of the estate. If the receiver sells or dissolves the corporate entity or charter of the insurer, the receiver shall have the power to apply to any court in this state or elsewhere for leave to substitute the receiver for the insurer as a party. This paragraph does not infringe or impair any of the rights provided to a guaranty association pursuant to its enabling statute or otherwise;

4. a. To conduct public or private sales of the insurer's property, and thereby to acquire, hypothecate, encumber, lease, sell, improve, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, and to settle or resolve any claim or lawsuit brought by the receiver on behalf of the insurer or pending when a petition for supervision, conservation, receivership, rehabilitation or liquidation is filed, or commute or settle any claim of reinsurance under any contract of reinsurance,

b. to transfer either proceeds of or rights to payment under ceding reinsurance agreements covering policies to a third-party transferee. A transfer of rights to payment shall only be made with the consent of the reinsurer and in conjunction with the transfer to such person of all rights and obligations relating to the transferred ceding reinsurance agreement and of all property, including any guarantees or other credit enhancement, securing any claims of each party under each reinsurance agreement. The consent of a

reinsurer under this subparagraph shall not be unreasonably withheld. If the receiver believes that the consent of a reinsurer was unreasonably withheld, the receiver may petition the receivership court to order binding arbitration. The arbitration shall be conducted in accordance with the arbitration procedures in the reinsurance contract, or if no such provisions exist, in accordance with the procedures of the American Arbitration Association. A transferee under this subparagraph shall have the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of the claim. The transfer of these rights shall not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether the agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement. Except as provided in this subparagraph, any transfer of rights pursuant to this provision shall not impair any rights or defenses of the reinsurer that existed prior to the transfer or would have existed in the absence of the transfer. Except as otherwise provided in this subparagraph, any transfer of rights pursuant to this provision shall not relieve the transferee or the receiver from obligations owed to the reinsurer pursuant to the reinsurance or other agreement, and

c. to execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation or rehabilitation and to file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

5. a. To use property of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to

applicable priorities under Section 1927.1 of this title,

b. to use property of the estate to transfer the insurer's obligations under surety bonds and surety undertakings, and collateral held by the insurer with respect to the reimbursement obligations of the principals under those surety bonds and surety undertakings, to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under Section 1927.1 of this title; and if the receivership court so orders, the estate shall have no further liability under the transferred policies, surety bonds, or surety undertakings after the transfer is made, and

c. upon the issuance of an order of liquidation and a finding of insolvency, policies or portions of policies of life, disability income, long-term care or health insurance or annuities covered by one or more guaranty associations, under applicable law, shall continue in force, subject to the terms of the policy, including any terms restructured pursuant to a court-approved rehabilitation plan, to the extent necessary to permit the guaranty associations to discharge their statutory obligations. Policies or portions of policies of life, disability income, long-term care or health insurance or annuities, not covered by one or more guaranty associations, and other types of policies, shall terminate by operation of law, except to the extent the receiver proposes and the receivership court approves the use of property of the estate, consistent with subparagraphs a and b of this paragraph, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer;

6. To borrow money on the security of the property of the estate or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation or rehabilitation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other

claims in Class 1 under the priority of distribution in Section 1927.1 of this title;

7. To enter into contracts, and to assume or reject any executory contract or unexpired lease to which the insurer is a party; provided, however, if the receiver is bound by any provision of any contract of or by the insurer which requires arbitration, such arbitration shall be conducted in the State of Oklahoma; notwithstanding the foregoing, or any other provision of this chapter, no receiver shall have the power to reject, disavow or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement;

8. To take possession of the records and property of the insurer. Guaranty associations shall have reasonable access to the records of the insurer necessary for them to carry out their statutory obligations;

9. To deposit in one or more banks in this state sums required for meeting current administration expenses and dividend distributions;

10. To invest the assets of the estate;

11. To enter into agreements with any receivers or commissioners of any other states; and

12. To exercise all powers now held or hereafter conferred upon receivers by the applicable statutory and common law of this state not inconsistent with the provisions of the Uniform Insurers Liquidation Act.

B. The receiver is vested with all the rights of the entity or entities in receivership.

C. The enumeration, in this section, of the powers and authority of the receiver shall not be construed as a limitation upon the receiver, nor shall it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for,

to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation or rehabilitation.

D. The receiver shall not be obligated to defend any action against the insurer or insured. An insured not defended by a guaranty association may provide his or her own defense, and include the cost of the defense as part of any claim of the insured against the estate, if the defense was an obligation of the insurer. The right of the receiver to contest coverage on a particular claim shall be deemed preserved without the necessity of an express reservation of rights.

SECTION 3. AMENDATORY 36 O.S. 2011, Section 1926, is amended to read as follows:

Section 1926. A. Every transfer made or suffered to be made and every obligation incurred by an insurer within one (1) year prior to the filing of a successful petition for rehabilitation or liquidation under the Insurance Code is fraudulent as to then existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under the Insurance Code, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

B. Every director, officer, employee, stockholder, member, agent, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the Insurance Commissioner.

C. The Insurance Commissioner as receiver in any proceeding under this article may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this article. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

D. Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under this section if:

1. The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and

2. Any part of the transaction took place within one (1) year prior to the date of filing of the petition through which the receivership was commenced.

E. Notwithstanding subsection A of this section, or any other provision of this chapter, no receiver shall avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement. However, a transfer may be avoided under this section if it was made with actual intent to hinder, delay or defraud either existing or future creditors.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 7th day of March, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 15th day of April, 2013.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 16th day of April, 20 13, at 1:17 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 22 day of April, 20 13, at 3:26 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 22nd day of April, 20 13, at 4:30 o'clock P. M.

By: Kathy V. Parmenter