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AS AMENDED

By: McEntire of the House

Quinn of the Senate

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1 SECTION 1. AMENDATORY 36 O.S. 2011, Section 2022, is
2 amended to read as follows:

3 Section 2022. A. The purpose of ~~this act~~ the Oklahoma Life and
4 Health Insurance Guaranty Association Act is to protect, subject to
5 certain limitations, the persons specified in subsection A of
6 Section 2025 of ~~the Insurance Code~~ this title, against failure in
7 the performance of contractual obligations, under life ~~and,~~ health
8 ~~insurance policies,~~ and annuity policies, plans or contracts
9 specified in subsection B of Section 2025 of the ~~Insurance Code~~ this
10 title, because of the impairment or insolvency of the member insurer
11 that issued the policies, plans or contracts.

12 B. To provide this protection, an association of member
13 insurers has been created and exists to pay benefits and to continue
14 coverages as limited in this act, and members of the Association are
15 subject to assessment to provide funds to carry out the purposes of
16 this act.

17 SECTION 2. AMENDATORY 36 O.S. 2011, Section 2023, is
18 amended to read as follows:

19 Section 2023. A. There is created a nonprofit legal entity to
20 be known as the Oklahoma Life and Health Insurance Guaranty
21 Association. All member insurers shall be and remain members of the
22 Association as a condition of their authority to transact insurance
23 as a health maintenance organization business in this state.

24

1 B. The Association shall perform its functions under a plan of
2 operation established and approved in accordance with this act and
3 shall exercise its powers through the Board of Directors established
4 in this act. For purposes of administration and assessment, the
5 Association shall maintain three ~~(3)~~ accounts:

- 6 1. The health ~~insurance~~ account;
- 7 2. The life insurance account; and
- 8 3. The annuity account.

9 C. The Association shall come under the immediate supervision
10 of the Insurance Commissioner and shall be subject to the applicable
11 provisions of the insurance laws of this state.

12 SECTION 3. AMENDATORY 36 O.S. 2011, Section 2024, is
13 amended to read as follows:

14 Section 2024. As used in ~~Sections 2021 through 2043 of this~~
15 ~~title~~ the Oklahoma Life and Health Insurance Guaranty Association
16 Act:

- 17 1. "Account" means ~~either one~~ one of the ~~two~~ three accounts created
18 under Section 2023 of this title;
- 19 2. "Association" means the Oklahoma Life and Health Insurance
20 Guaranty Association created in Section 2023 of this title;
- 21 3. "Commissioner" means the Oklahoma Insurance Commissioner;
- 22 4. "Contractual obligation" means an obligation under a policy
23 or contract or certificate under a group policy or contract, or
24

1 portion thereof for which coverage is provided under Section 2025 of
2 this title;

3 5. "Covered contract" or "covered policy" means a policy or
4 contract or portion of a policy or contract for which coverage is
5 provided under Section 2025 of this title;

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

9 7. "Health benefit plan" means any hospital or medical expense
10 policy or certificate or health maintenance organization subscriber
11 contract or any other similar health contract. Health benefit plan
12 does not include:

- 13 a. accident-only insurance,
- 14 b. credit insurance,
- 15 c. dental-only insurance,
- 16 d. vision-only insurance,
- 17 e. Medicare supplemental insurance,
- 18 f. benefits for long-term care, home health care,
19 community-based care, or any combination thereof,
- 20 g. disability income insurance,
- 21 h. coverage for on-site medical clinics, or
- 22 i. specified disease, hospital confinement indemnity or
23 limited health insurance if the types of coverage do

1 not provide coordination of benefits and are provided
2 under separate policies or certificates;

3 8. "Impaired insurer" means a member insurer which, after the
4 effective date of this act, is not an insolvent insurer and is
5 placed under an order of rehabilitation or conservation by a court
6 of competent jurisdiction;

7 ~~8.~~ 9. "Insolvent insurer" means a member insurer which, after
8 the effective date of this act, is placed under an order of
9 liquidation by a court of competent jurisdiction with a finding of
10 insolvency;

11 ~~9.~~ 10. "Member insurer" means any nonprofit hospital service
12 and medical indemnity corporation and any insurer or health
13 maintenance organization licensed or that holds a certificate of
14 authority to transact in this state any kind of insurance or health
15 maintenance organization business for which coverage is provided
16 under Section 2025 of this title, and includes any insurer or health
17 maintenance organization whose license or certificate of authority
18 in this state may have been suspended, revoked, not renewed or
19 voluntarily withdrawn, but does not include:

20 a. ~~a health maintenance organization,~~

21 ~~b.~~ a. a fraternal benefit society,

22 ~~c.~~ b. a mandatory state-pooling plan,

23 ~~d.~~ c. a mutual assessment company or other person that
24 operates on an assessment basis,

~~e.~~ d. an insurance exchange,

~~f.~~ e. 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.~~ f. any entity similar to any of the above;

~~10.~~ 11. "Moody's Corporate Bond Yield Average" means the
Monthly Average Corporates as published by Moody's Investors
Service, Inc., or any successor thereto;

~~11.~~ 12. "Owner", "policyholder", "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 member insurer. Owner, policyholder, policy owner or
contract owner does not include persons with a mere beneficial
interest in a policy or contract;

~~12.~~ 13. "Person" means an individual, corporation, limited
liability company, partnership, association, governmental body or
entity, or voluntary organization;

~~13.~~ 14. "Premiums" means amounts or considerations by whatever
name called, received on covered policies or contracts less returned
premiums, considerations and deposits and less dividends and
experience credits. "Premiums" does not include amounts or

1 considerations received for policies or contracts or for the
2 portions of any policies or contracts for which coverage is not
3 provided under subsection B of Section 2025 of this title except
4 that assessable premium shall not be reduced on account of
5 subparagraph ~~(e)~~ c of paragraph 2 of subsection B of Section 2025 of
6 this title relating to interest limitations and paragraph 2 of
7 subsection C of Section 2025 of this title relating to limitations
8 with respect to one individual, one participant and one policy or
9 contract owner. Premiums does not include:

10 a. premiums on an unallocated annuity contract, or

11 b. premiums in excess of Five Million Dollars

12 (\$5,000,000.00) on multiple non-group policies of life
13 insurance owned by one owner, whether the policy or
14 contract owner is an individual, firm, corporation, or
15 other person, and whether the persons insured are
16 officers, managers, employees or other persons,
17 regardless of the number of policies or contracts held
18 by the owner;

19 ~~14.~~ 15. "Principal place of business" of a person other than a
20 natural person means the single state in which the natural persons
21 who establish policy for the direction, control and coordination of
22 the operations of the entity as a whole primarily exercise that
23 function, determined by the Association in its reasonable judgment
24 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.~~ 16. "Receivership court" means the court in the insolvent or impaired state of the insurer having jurisdiction over the conservation, rehabilitation or liquidation of the member insurer;

~~16.~~ 17. "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of

1 entry of a court order that determines a member insurer to be an
2 impaired insurer or a court order that determines a member insurer
3 to be an insolvent insurer. A person may be a resident of only one
4 state, which in the case of a person other than a natural person
5 shall be its principal place of business. Citizens of the United
6 States that are either residents of foreign countries or residents
7 of the United States possessions, territories or protectorates that
8 do not have an association similar to the Association created by the
9 Oklahoma Life and Health Insurance Guaranty Association Act, shall
10 be deemed residents of the state of domicile of the insurer that
11 issued the policy or contract;

12 ~~17.~~ 18. "State" means a state of the United States, the
13 District of Columbia, Puerto Rico, or a United States possession,
14 territory or protectorate;

15 ~~18.~~ 19. "Structured settlement annuity" means an annuity
16 purchased in order to fund periodic payments for a plaintiff or
17 other claimant in payment for or with respect to personal injury
18 suffered by a plaintiff or other claimant;

19 ~~19.~~ 20. "Supplemental contract" means a written agreement
20 entered into for the distribution of proceeds under a life, health
21 or annuity policy or contract; and

22 ~~20.~~ 21. "Unallocated annuity contract" means an annuity
23 contract or group annuity certificate which is not issued to and
24 owned by an individual, except to the extent of any annuity benefits

1 guaranteed to an individual by an insurer under the contract or
2 certificate.

3 SECTION 4. AMENDATORY 36 O.S. 2011, Section 2025, is
4 amended to read as follows:

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

8 1. a. To persons, who regardless of where they reside,
9 except for nonresident certificate holders under group
10 policies or contracts, are the beneficiaries,
11 assignees or payees, including health care providers
12 rendering services covered under health insurance
13 policies or certificates, of the persons covered under
14 subparagraph b of this paragraph,

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

18 (1) are residents, or

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

21 (a) the member insurer that issued the policies
22 or contracts are domiciled in this state,

23 (b) the states in which the persons reside have
24 associations similar to the Oklahoma Life

1 and Health Insurance Guaranty Association
2 created by this act, and the persons are not
3 eligible for coverage by an association in
4 any other state due to the fact that the
5 insurer or health maintenance organization
6 was not licensed in the state at the time
7 specified in the guaranty association law of
8 the state;

9 2. Subparagraphs a and b of paragraph 1 of this subsection
10 shall not apply to structured settlement annuities specified in
11 subsection B of this section and in the Oklahoma Life and Health
12 Insurance Guaranty Association Act shall, except as provided in
13 paragraphs 3 and 4 of this subsection, provide coverage to a person
14 who is a payee under a structured settlement annuity or a
15 beneficiary of a payee if the payee is deceased, if the payee:

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

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

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

22 (b) the contract owner of the structured
23 settlement annuity is not a resident but:
24

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

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

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

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

18 4. The Oklahoma Life and Health Insurance Guaranty Association
19 Act is intended to provide coverage to a person who is a resident of
20 this state and in special circumstances, to a nonresident. In order
21 to avoid duplicate coverage, if a person who would otherwise receive
22 coverage under the Oklahoma Life and Health Insurance Guaranty
23 Association Act is provided coverage under the laws of any other
24 state, the person shall not be provided coverage under the Oklahoma

1 Life and Health Insurance Guaranty Association Act. In determining
2 the application of the provisions of this paragraph to situations
3 where a person could be covered by the association of more than one
4 state, whether as an owner, payee, enrollee, beneficiary or
5 assignee, the Oklahoma Life and Health Insurance Association Act
6 shall be construed in conjunction with the laws of other states to
7 result in coverage by only one association.

8 B. 1. The Oklahoma Life and Health Insurance Guaranty
9 Association Act shall provide coverage to the persons specified in
10 subsection A of this section for policies or contracts of direct,
11 non-group life insurance, health, annuity insurance, which for the
12 purposes of this act includes health maintenance organization
13 subscriber contracts and certificates, or annuities and supplemental
14 policies or contracts to any of these, and for certificates under
15 direct group policies and contracts, except as limited by the
16 Oklahoma Life and Health Insurance Guaranty Association Act.
17 Annuity contracts and certificates under group annuity contracts
18 include allocated funding agreements, structured settlement
19 annuities and any immediate or deferred annuity contracts.

20 2. ~~This act~~ Except as provided in paragraph 3 of this
21 subsection, the Oklahoma Life and Health Insurance Guaranty
22 Association Act shall not provide coverage for:
23
24

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

1 contract, exceeds the rate of interest determined
2 by subtracting three (3) percentage points from
3 Moody's Corporate Bond Yield Average as most
4 recently available,

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

- 12 (1) a Multiple Employer Welfare Arrangement as
13 defined in 29 U.S.C. Section 1144,
14 (2) a minimum premium group insurance plan,
15 (3) a stop-loss group insurance plan, or
16 (4) an administrative services only contract~~+~~L

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

- 19 (1) dividends or experience rating credits,
20 (2) voting rights, or
21 (3) payment of any fees or allowances to any person,
22 including the policy or contract owner, in
23 connection with the service to or administration
24 of the policy or contract,

- 1 f. a policy or contract issued in this state by a member
2 insurer at a time when it was not licensed or did not
3 have a certificate of authority to issue the policy or
4 contract in this state,
- 5 g. a portion of a policy or contract to the extent that
6 the assessments required by Section 2030 of this title
7 with respect to the policy or contract are preempted
8 by federal or state law,
- 9 h. an obligation that does not arise under the express
10 written terms of the policy or contract issued by the
11 member insurer to the enrollee, certificate holder or
12 contract or policy owner, including without
13 limitation:
- 14 (1) claims based on marketing materials,
15 (2) claims based on side letters, riders or other
16 documents that were issued by the member insurer
17 without meeting applicable policy or contract
18 form filing or approval requirements,
- 19 (3) misrepresentations of or regarding policy or
20 contract benefits,
21 (4) extra-contractual claims, or
22 (5) a claim for penalties or consequential or
23 incidental damages,
24

- 1 i. a contractual agreement that establishes the
2 obligations of the member insurer to provide a book
3 value accounting guaranty for defined contribution
4 benefit plan participants by reference to a portfolio
5 of assets that is owned by the benefit plan or its
6 trustee, which in each case is not an affiliate of the
7 member insurer,
- 8 j. an unallocated annuity contract,
- 9 k. a portion of a policy or contract to the extent it
10 provides for interest or other changes in value to be
11 determined by the use of an index or other external
12 reference stated in the policy or contract, but which
13 have not been credited to the policy or contract, or
14 as to which the policy or contract owner's rights are
15 subject to forfeiture, as of the date the member
16 insurer becomes an impaired or insolvent insurer under
17 the Oklahoma Life and Health Insurance Guaranty
18 Association Act, whichever is earlier. If a policy's
19 or contract's interest or changes in value are
20 credited less frequently than annually, then for
21 purposes of determining the values that have been
22 credited and are not subject to forfeiture under this
23 subparagraph, the interest or change in value
24 determined by using the procedures defined in the

1 policy or contract will be credited as if the
2 contractual date of crediting interest or changing
3 values was the date of impairment or insolvency,
4 whichever is earlier, and will not be subject to
5 forfeiture, or

- 6 1. a policy or contract providing any hospital, medical,
7 prescription drug or other health care benefits
8 pursuant to Part C or Part D of Subchapter XVIII,
9 Chapter 7 of Title 42 of the United States Code,
10 commonly known as Medicare Part C or Part D, or
11 Subchapter XIX, Chapter 7 of Title 42 of the United
12 States Code or any regulations issued pursuant
13 thereto.

14 3. The exclusion from coverage in this section shall not apply
15 to any portion of a policy or contract, including a rider that
16 provides long-term care or any other health insurance benefits.

17 C. The benefits that the Association may become obligated to
18 cover shall in no event exceed the lesser of:

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

- 22 2. a. with respect to any one life, regardless of the number
23 of policies or contracts:
24

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

6 (2) ~~in~~ for health insurance benefits:

7 (a) One Hundred Thousand Dollars (\$100,000.00)
8 for coverages not defined as disability
9 income insurance or ~~basic hospital, medical~~
10 ~~and surgical insurance or major medical~~
11 ~~insurance~~ health benefit plans or long-term
12 care insurance as defined in Section 4424 of
13 this title, including any net cash surrender
14 and net cash withdrawal values,

15 (b) Three Hundred Thousand Dollars (\$300,000.00)
16 for insurance providing income payments to
17 an insured wage earner when income is
18 interrupted or terminated because of
19 illness, sickness or accident, commonly
20 known as disability income insurance and
21 Three Hundred Thousand Dollars (\$300,000.00)
22 for long-term care insurance as defined in
23 Section 4424 of this title, and
24

1 (c) Five Hundred Thousand Dollars (\$500,000.00)
2 for ~~basic hospital, medical and surgical~~
3 ~~insurance or insurance providing coverage in~~
4 ~~excess of that provided by a basic hospital,~~
5 ~~medical and surgical insurance, commonly~~
6 ~~known as major medical insurance~~ health
7 benefit plans, or

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

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

18 c. however, in no event shall the Association be
19 obligated to cover more than:

20 (1) an aggregate of Three Hundred Thousand Dollars
21 (\$300,000.00) in benefits with respect to any one
22 life under this subparagraph and subparagraphs a
23 and b of this paragraph except with respect to
24 ~~benefits for basic hospital, medical and surgical~~

1 ~~insurance and major medical insurance~~ health
2 benefit plans under division (2) of subparagraph
3 a of this paragraph, in which case the aggregate
4 liability of the Association shall not exceed
5 Five Hundred Thousand Dollars (\$500,000.00) with
6 respect to any one individual, or

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

16 d. the limitations set forth in this subsection are
17 limitations on benefits for which the Association is
18 obligated before taking into account either its
19 subrogation and assignment rights or the extent to
20 which those benefits could be provided out of the
21 assets of the impaired or insolvent insurer
22 attributable to covered policies. The costs of the
23 obligations of the Association under the Oklahoma Life
24 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,
e. for purposes of the Oklahoma Life and Health Insurance Guaranty Association Act, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

D. In performing its obligations to provide coverage under Section 2028 of this title, the Association shall not be required to guarantee, assume, reinsure, reissue or perform, or cause to be guaranteed, assumed, reinsured, reissued 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 5. AMENDATORY 36 O.S. 2011, Section 2026, is amended to read as follows:

Section 2026. A. The Board of Directors of the Oklahoma Life and Health Insurance Guaranty Association shall consist of not less than ~~five (5)~~ seven (7) nor more than ~~nine (9)~~ eleven (11) member insurers serving terms as established in the procedural rules of the Association. A majority of the Board shall be selected from the

fifty (50) member insurers which write the largest volume of life and accident and health premiums and annuity considerations for the previous year. The members of the Board shall be selected by member insurers subject to the approval of the Insurance Commissioner. Vacancies on the Board shall be filled for the remaining period of the term by a majority vote of the remaining Board members, subject to the approval of the Commissioner.

B. In calculating total premium for Board qualification purposes, premiums collected by different members of the same multi-insurer group may be attributable to each member of the group; provided, no two members of the same group shall serve on the Board at the same time.

C. In approving selections, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

D. Members of the Board may be reimbursed ~~according to the provisions of the State Travel Reimbursement Act~~ by the Association for expenses incurred by them as members of the Board, but members of the Board shall not otherwise be compensated by the Association for their services.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 2027, is amended to read as follows:

Section 2027. A. 1. The Oklahoma Life and Health Insurance Guaranty Association shall submit to the Insurance Commissioner

1 procedural rules and any amendments thereto necessary or suitable to
2 assure the fair, reasonable and equitable administration of the
3 Association. The procedural rules and any amendments thereto shall
4 become effective upon approval in writing by the Commissioner.

5 2. If the Association fails to submit suitable procedural rules
6 within one hundred eighty (180) days following the effective date of
7 this act or if at any time thereafter the Association fails to
8 submit suitable amendments to the rules, the Commissioner shall,
9 after notice and hearing, adopt and promulgate such reasonable rules
10 as are necessary to effectuate the provisions of ~~this act~~ the
11 Oklahoma Life and Health Insurance Guaranty Association Act. Such
12 rules shall continue in force until modified by the Commissioner or
13 superseded by rules submitted by the Association and approved by the
14 Commissioner. All member insurers shall comply with the procedural
15 rules.

16 B. The procedural rules shall, in addition to requirements
17 enumerated elsewhere in ~~this act~~ the Oklahoma Life and Health
18 Insurance Guaranty Association Act:

19 1. Establish procedures for handling the assets of the
20 Association;

21 2. Establish regular places and times for meeting of the Board
22 of Directors;
23
24

1 3. Establish procedures for records to be kept of all financial
2 transactions of the Association, its agents, and the Board of
3 Directors;

4 4. Establish the procedures whereby selections for the Board of
5 Directors will be made and submitted to the Commissioner;

6 5. Establish any additional procedures for assessments under
7 ~~Section 10 of this act~~ 2030 of this title; and

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

10 C. The procedural rules may provide that any or all powers and
11 duties of the Association, except those under ~~paragraph 3 of Section~~
12 ~~9 and those under~~ Section 10 of this act 2030 of this title, are
13 delegated to a corporation, association or other organization which
14 performs or will perform functions similar to those of this
15 Association, or its equivalent, in two or more states if there is a
16 reciprocal agreement with such states to provide similar services.
17 Such a corporation, association or organization shall be reimbursed
18 for any payments made on behalf of the Association and shall be paid
19 for the performance of any function of the Association. A
20 delegation of powers or duties under this subsection shall take
21 effect only with the approval of both the Board and the
22 Commissioner, and may be made only to a corporation, association or
23 organization which extends protection not substantially less
24 favorable and effective than that provided by this act.

SECTION 7. AMENDATORY 36 O.S. 2011, Section 2028, is amended to read as follows:

Section 2028. A. If a member insurer is an impaired 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 Insurance Commissioner:

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

2. 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.

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

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

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

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

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

6 a. with respect to ~~life and health insurance policies and~~
7 ~~annuities~~ policies and contracts, assure payment of
8 benefits ~~for premiums identical to the premiums and~~
9 ~~benefits, except for terms of conversion and~~
10 ~~renewability~~, that would have been payable under the
11 policies or contracts of the insolvent insurer for
12 claims incurred:

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

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

1 Association becomes obligated with respect to the
2 policies or contracts,

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

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

1 the insurer or health maintenance organization had no
2 right unilaterally to make changes in any provision of
3 the policy, contract or annuity or had a right only to
4 make changes in premium by class,

5 d. (1) in providing the substitute coverage required
6 under subparagraph c of this paragraph, the
7 Association may offer either to reissue the
8 terminated coverage or to issue an alternative
9 policy or contract at actuarially justified
10 rates, subject to the prior approval of the
11 Insurance Commissioner,

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

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

20 e. (1) alternative policies or contracts adopted by the
21 Association shall be subject to the approval of
22 the ~~domiciliary insurance commissioner and the~~
23 ~~receivership court~~ Insurance Commissioner. The
24 Association may adopt alternative policies or

1 contracts of various types for future issuance
2 without regard to any particular impairment or
3 insolvency,

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

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

21 f. if the Association elects to reissue terminated
22 coverage at a premium rate different from that charged
23 under the terminated policy or contract, the premium
24 shall be actuarially justified and set by the

1 Association in accordance with the amount of insurance
2 or coverage provided and the age and class of risk,
3 subject to prior approval of the ~~domiciliary insurance~~
4 ~~commissioner and the receivership court~~ Insurance
5 Commissioner,

6 g. the obligations of the Association with respect to
7 coverage under any policy or contract of the impaired
8 or insolvent insurer or under any reissued or
9 alternative policy or contract shall cease on the date
10 the coverage or policy or contract is replaced by
11 another similar policy or contract by the policy or
12 contract owner, the insured, enrollee or the
13 Association,

14 h. when proceeding under paragraph 2 of subsection B of
15 this section with respect to a policy or ~~contract~~
16 contract carrying guaranteed minimum interest rates,
17 the Association shall assure the payment or crediting
18 of a rate of interest consistent with subparagraph c
19 of paragraph 2 of subsection B of Section 2025 of this
20 title.

21 C. Nonpayment of premiums within thirty-one (31) days after the
22 date required under the terms of any guaranteed, assumed,
23 alternative or reissued policy or contract or substitute coverage
24 shall terminate the Association's obligations under the policy,

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

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

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

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

23 1. Impose permanent policy or contract liens in connection with
24 a guarantee, assumption or reinsurance agreement, if the Association

1 finds that the amounts which can be assessed under this act are less
2 than the amounts needed to assure full and prompt performance of the
3 duties of the Association under the Oklahoma Life and Health
4 ~~Guaranty~~ Insurance Guaranty Association Act, or that the economic or
5 financial conditions as they affect member insurers are sufficiently
6 adverse to render the imposition of permanent policy or contract
7 liens, to be in the public interest; and

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

22 G. A deposit in this state, held pursuant to law or required by
23 the Commissioner for the benefit of creditors, including but not
24 limited to policy or contract owners, not turned over to the

1 domiciliary liquidator upon the entry of a final order of
2 liquidation or order approving a rehabilitation plan of ~~an~~ a member
3 insurer domiciled in this state or in a reciprocal state, shall be
4 promptly paid by the Association. The Association shall be entitled
5 to retain a portion of any amount so paid to it equal to the
6 percentage determined by dividing the aggregate amount of policy or
7 contract owners claims related to that insolvency for which the
8 Association has provided statutory benefits by the aggregate amount
9 of all claims by the policy or contract owners in this state related
10 to that insolvency and shall remit to the domiciliary receiver the
11 amount so paid to the Association less the amount retained pursuant
12 to this subsection. Any amount so paid to the Association and
13 retained by it shall be treated as a distribution of estate assets
14 pursuant to applicable state receivership laws dealing with early
15 access disbursements.

16 H. If the Association fails to act within a reasonable period
17 of time with respect to an insolvent insurer, as provided in
18 subsection B of this section, the Commissioner shall have the powers
19 and duties of the Association under the Oklahoma Life and Health
20 Insurance Guaranty Association Act with respect to the insolvent
21 insurer~~+~~.

22 I. The Association may render assistance and advice to the
23 Commissioner, upon the request of the Commissioner, concerning
24 rehabilitation, payment of claims, continuance of coverage, or the

1 performance of other contractual obligations of an impaired or
2 insolvent insurer~~+~~.

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

20 K. 1. Any person receiving benefits under the Oklahoma Life
21 and ~~Insurance~~ Health Insurance Guaranty Association Act shall be
22 deemed to have assigned the rights under, and any causes of action
23 against any person for losses arising under, resulting from or
24 otherwise relating to, the covered policy or contract to the

1 Association to the extent of the benefits received because of this
2 act, whether the benefits are payments of or on account of
3 contractual obligations, continuation of coverage or provision of
4 substitute or alternative policies, contracts or coverages. The
5 Association may require an assignment to it of the rights and cause
6 of action by any enrollee, payee, policy or contract owner,
7 beneficiary, insured or annuitant as a condition precedent to the
8 receipt of any rights or benefits conferred by this act upon the
9 person.

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

15 3. In addition to paragraphs 1 and 2 of this subsection, the
16 Association shall have all common law rights of subrogation and any
17 other equitable or legal remedy that would have been available to
18 the impaired or insolvent insurer or owner, beneficiary, enrollee or
19 payee of a policy or contract with respect to the policy or
20 contracts, including without limitation, in the case of a structured
21 settlement annuity, any rights of the owner, beneficiary or payee of
22 the annuity, to the extent of benefits received pursuant to the
23 Oklahoma Life and Health Insurance Guaranty Association Act, against
24 a person originally or by succession responsible for the losses

1 arising from the personal injury relating to the annuity or payment
2 ~~therefore~~ therefor, excepting any person responsible solely by
3 reason of serving as an assignee in respect of a qualified
4 assignment under Internal Revenue Code Section 130.

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

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

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

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

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

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

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

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

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

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

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

6 9. Unless prohibited by law, in accordance with the terms and
7 conditions of the policy or contract, file for actuarially justified
8 rate or premium increases for any policy or contract for which it
9 provides coverage under the Oklahoma Life and Health Insurance
10 Guaranty Association Act; and

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

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

18 N. 1. a. At any time within one hundred eighty (180) days of
19 the date of the order of liquidation, the Association
20 may elect to succeed to the rights and obligations of
21 the ceding member insurer that relate to policies,
22 contracts or annuities covered, in whole or in part,
23 by the Association, in each case under any one or more
24 reinsurance contracts entered into by the insolvent

1 insurer and its reinsurers and selected by the
2 Association. Any assumption shall be effective as of
3 the date of the order of liquidation. The election
4 shall be effected by the Association or the National
5 Organization of Life and Health Insurance Guaranty
6 Associations (NOLHGA) on its behalf sending written
7 notice, return receipt requested, to the affected
8 reinsurers.

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

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

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

19 (2) the Association shall be entitled to any amounts
20 payable by the reinsurer under the reinsurance
21 contracts with respect to losses or events that
22 occur in periods after the date of the order of
23 liquidation and that relate to policies, contracts
24 contracts or annuities covered, in whole or in

1 part, by the Association, provided that, upon
2 receipt of any of these amounts, the Association
3 shall be obliged to pay to the beneficiary under
4 the policy, contract or annuity on account of
5 which the amounts were paid a portion of the
6 amount equal to the lesser of:

7 (a) the amount received by the Association, or

8 (b) the excess of the amount received by the
9 Association over the amount equal to the
10 benefits paid by the Association on account
11 of the policy, contract or annuity less the
12 retention of the insurer applicable to the
13 loss or event,

14 (3) within thirty (30) days following the election
15 date of the Association, the Association and each
16 reinsurer under contracts assumed by the
17 Association shall calculate the net balance due
18 to or from the Association under each reinsurance
19 contract as of the election date with respect to
20 policies, contracts or annuities covered, in
21 whole or in part, by the Association, which
22 calculation shall give full credit to all items
23 paid by either the member insurer or its receiver
24 or the reinsurer prior to the election date. The

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

19 (4) if the Association or receiver, on the behalf of
20 the Association, within sixty (60) days of the
21 election date, pays the unpaid premiums due for
22 periods both before and after the election date
23 that relate to policies, contracts or annuities
24 covered, in whole or in part, by the Association,

1 the reinsurer shall not be entitled to terminate
2 the reinsurance contracts for failure to pay the
3 premium insofar as the reinsurance contracts
4 relate to policies, contracts or annuities
5 covered, in whole or in part, by the Association,
6 and shall not be entitled to set off any unpaid
7 amounts due under other contracts, or unpaid
8 amounts due from parties other than the
9 Association, against amounts due the Association.

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

14 a. (1) neither the Association nor the reinsurer shall
15 have any rights or obligations under reinsurance
16 contracts that the Association has the right to
17 assume under paragraph 1 of this subsection,
18 whether for periods prior to or after the date of
19 the order of liquidation, and

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

23 b. Provided that once the Association has elected to
24 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, contracts or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies, contracts 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, contracts 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

1 reinsurer not less than thirty (30) days prior to the
2 effective date of the transfer.

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

12 6. Except as otherwise provided in this section, nothing in
13 this subsection shall alter or modify the terms and conditions of
14 any reinsurance contract. Nothing in this section shall abrogate or
15 limit any rights of any reinsurer to claim that it is entitled to
16 rescind a reinsurance contract. Nothing in this section shall give
17 a policyholder, contract owner, enrollee, certificate holder or
18 beneficiary an independent cause of action against a reinsurer that
19 is not otherwise set forth in the reinsurance contract. Nothing in
20 this section shall limit or affect the rights of the Association as
21 a creditor of the estate against the assets of the state. Nothing
22 in this section shall apply to reinsurance agreements covering
23 property or casualty risks.

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

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

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

19 R. In carrying out its duties in connection with guaranteeing,
20 assuming or reinsuring policies or contracts under subsection A or B
21 of this section, the Association may, subject to approval of the
22 receivership court, issue substitute coverage for a policy or
23 contract that provides an interest rate, crediting rate or similar
24 factor determined by use of an index or other external reference

1 stated in the policy or contract employed in calculating returns or
2 changes in value by issuing an alternative policy or contract in
3 accordance with the following provisions:

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

7 a. a fixed interest rate,

8 b. payment of dividends with minimum guarantees, or

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

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

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

16 SECTION 8. AMENDATORY 36 O.S. 2011, Section 2030, is
17 amended to read as follows:

18 Section 2030. A. For the purpose of providing the funds
19 necessary to carry out the powers and duties of the Oklahoma Life
20 and Health Insurance Guaranty Association, the Board of Directors of
21 the Oklahoma Life and Health Insurance Guaranty Association shall
22 assess the member insurers, separately for each account, at such
23 time and for such amounts as the Board finds necessary. Assessments
24 shall be due not less than thirty (30) days after prior written

1 notice to the member insurers and shall accrue interest at six
2 percent (6%) per annum on and after the due date.

3 B. There shall be two classes of assessments, as follows:

4 1. Class A assessments shall be made for the purpose of meeting
5 administrative and legal costs and other expenses and examinations
6 ~~conducted under the authority of subsection D of Section 2033 of the~~
7 ~~Insurance Code.~~ Class A assessments may be made whether or not
8 related to a particular impaired or insolvent insurer;

9 2. Class B assessments shall be made to the extent necessary to
10 carry out the powers and duties of the Association under Section
11 2028 of ~~the Insurance Code~~ this title with regard to an impaired or
12 an insolvent foreign or domestic insurer.

13 C. 1. The amount of any Class A assessment shall be determined
14 by the Board and may be made on a pro rata or non-pro rata basis.
15 If pro rata, the Board may provide that it be credited against
16 future Class B assessments. A non-pro rata assessment shall be
17 credited against future insolvency ~~assessments and shall not exceed~~
18 ~~One Hundred Fifty Dollars (\$150.00) per member insurer in any one~~
19 ~~calendar year.~~

20 The amount of any Class B assessment, except for assessments
21 related to long-term care insurance, shall be allocated for
22 assessment purposes among the accounts and among the subaccounts of
23 the life insurance and annuity account, pursuant to an allocation
24 formula which may be based on the premiums or reserves of the

1 impaired or insolvent insurer or any other standard deemed by the
2 Board in its sole discretion as being fair and reasonable under the
3 circumstances.

4 The amount of the Class B assessment for long-term care
5 insurance written by the impaired or insolvent insurer shall be
6 allocated according to a methodology included in the plan of
7 operation and approved by the Commissioner. The methodology shall
8 provide for fifty percent (50%) of the assessment to be allocated to
9 accident and health member insurers and fifty percent (50%) to be
10 allocated to life and annuity member insurers.

11 2. Class B assessments against member insurers for each account
12 shall be in the proportion that the premiums received on business in
13 this state by each assessed member insurer on policies or contracts
14 covered by each account for the three (3) most recent calendar years
15 for which information is available preceding the year in which the
16 member insurer became impaired or insolvent, as the case may be,
17 bears to such premiums received on business in this state for such
18 calendar years by all assessed member insurers.

19 3. Assessments for funds to meet the requirements of the
20 Association with respect to an impaired or insolvent insurer shall
21 not be made until necessary to implement the purposes of this act.
22 Classification of assessments under subsection B of this section and
23 computation of assessments under this subsection shall be made with
24

1 a reasonable degree of accuracy, recognizing that exact
2 determinations may not always be possible.

3 D. The Association may abate, or defer in whole or in part, the
4 assessment of a member insurer if, in the opinion of the Board,
5 payment of the assessment would endanger the ability of the member
6 insurer to fulfill its contractual obligations. In the event an
7 assessment against a member insurer is abated, or deferred in whole
8 or in part, the amount by which such assessment is abated or
9 deferred may be assessed against the other member insurers in a
10 manner consistent with the basis for assessments set forth in this
11 section.

12 E. The total of all assessments upon a member insurer for each
13 account in any one (1) calendar year shall not exceed two percent
14 (2%) of such average premiums of the insurer received in this state
15 during the three (3) calendar years preceding the assessment on the
16 policies and contracts covered by the account and in which the
17 member insurer became an impaired or insolvent insurer. If the
18 maximum assessment together with the other assets of the Association
19 in any account does not provide in any one (1) year in either
20 account an amount sufficient to carry out the responsibilities of
21 the Association, the necessary additional funds shall be assessed as
22 soon thereafter as permitted by ~~this act~~ the Oklahoma Life and
23 Health Insurance Guaranty Association Act. The Board may provide in
24 the plan of operation, a method of allocating funds among claims,

1 whether relating to one or more impaired or insolvent insurers, when
2 the maximum assessment will be insufficient to cover anticipated
3 claims.

4 F. The Board may, by an equitable method as established in the
5 plan of operation, refund to member insurers, in proportion to the
6 contributions of each insurer to that account, the amount by which
7 the assets of the account exceed the amount the Board finds is
8 necessary to carry out the obligations of the Association during the
9 coming year with regard to that account, including assets accruing
10 from assignment, subrogation, net realized gains and income from
11 investments. A reasonable amount may be retained in any account to
12 provide funds for the continuing expenses of the Association and for
13 future losses.

14 G. It shall be proper for any member insurer to consider the
15 amount reasonably necessary to meet its obligations under this act
16 in determining its premium rates and ~~policyowner~~ policy owner
17 dividends as to any kind of insurance or health maintenance
18 organization business within the scope of ~~this act~~ the Oklahoma Life
19 and Health Insurance Guaranty Association Act.

20 H. The Association shall issue to each member insurer paying an
21 assessment under ~~this act~~ the Oklahoma Life and Health Insurance
22 Guaranty Association Act, other than a Class A assessment, a
23 certificate of contribution, in a form prescribed by the
24 Commissioner, for the amount of the assessment so paid. All

1 outstanding certificates shall be of equal priority without
2 reference to amounts or dates of issue. A certificate of
3 contribution may be shown by the member insurer in its financial
4 statement as an asset in such form and for such amount, if any, and
5 period of time as the Commissioner may approve.

6 I. A member insurer may offset against its premium, franchise
7 or income tax liability to this state, an assessment described in
8 subsection H of this section to the extent of twenty percent (20%)
9 of the amount of such assessment for each of the five (5) calendar
10 years following the year in which such assessment was paid. In the
11 event a member insurer should cease doing business, all uncredited
12 assessments may be credited against its premium, franchise or income
13 tax liability for the year it ceases doing business.

14 J. Any sums acquired by refund, pursuant to subsection F of
15 this section, from the Association which have theretofore been
16 written off by contributing insurers and offset against premium,
17 franchise or income taxes as provided in subsection I of this
18 section, and are not then needed for purposes of ~~this act~~ the
19 Oklahoma Life and Health Insurance Guaranty Association Act, shall
20 be paid by the Association to the Insurance Commissioner who shall
21 dispense such funds in accordance with the statutes regarding
22 disbursement of such taxes.

23 SECTION 9. AMENDATORY 36 O.S. 2011, Section 2032, is
24 amended to read as follows:

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

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

- 9 a. revocation of license,
- 10 b. suspension of license, or
- 11 c. makes a formal order that the ~~company~~ member insurer
12 restrict its premium writing, obtain additional
13 contributions to surplus, withdraw from the state,
14 reinsure all or any part of its business, or increase
15 capital, surplus or any other account for the security
16 of policy owners, contract owners, certificate owners
17 or creditors;

18 2. To report to the board of directors when the Commissioner
19 has taken any of the actions set forth in paragraph 1 of this
20 subsection or has received a report from any other commissioner of
21 other states indicating that any action has been taken in another
22 state. The report to the board of directors shall contain all
23 significant details of the action taken or the report received from
24 a commissioner from another state;

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

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

14 B. The Commissioner may seek the advice and recommendations of
15 the board of directors of the Oklahoma Life and Health Insurance
16 Guaranty Association concerning any matter affecting the duties and
17 responsibilities of the Commissioner regarding the financial
18 condition of member insurers and ~~companies~~ health maintenance
19 organizations seeking admission to transact ~~insurance~~ business in
20 this state.

21 C. The board of directors may, upon majority vote, make reports
22 and recommendations to the Commissioner upon any matter germane to
23 the solvency, liquidation, rehabilitation or conservation of any
24 member insurer or germane to the solvency of any ~~company~~ member

1 insurer or health maintenance organization seeking to do ~~an~~
2 ~~insurance~~ business in this state. The reports and recommendations
3 shall not be considered public documents.

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

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

10 SECTION 10. AMENDATORY 36 O.S. 2011, Section 2036, is
11 amended to read as follows:

12 Section 2036. A. For the purpose of carrying out its
13 obligations under the Oklahoma Life and Health Insurance Guaranty
14 Association Act, the Oklahoma Life and Health Insurance Guaranty
15 Association shall be deemed to be a creditor of the impaired or
16 insolvent insurer to the extent of assets attributable to covered
17 policies reduced by any amounts to which the Association is entitled
18 as subrogee pursuant to subsection K of Section 2028 of this title.
19 Assets of the impaired or insolvent insurer attributable to covered
20 policies shall be used to continue all covered policies and pay all
21 contractual obligations of the impaired or insolvent insurer as
22 required by the Oklahoma Life and Health Insurance Guaranty
23 Association Act. Assets attributable to covered policies or
24 contracts, as used in this subsection, are that proportion of the

1 assets that the reserves which should have been established for such
2 policies, or contracts bear to the reserves which should have been
3 established for all policies of insurance or health benefit plans
4 written by the impaired or insolvent insurer.

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

19 SECTION 11. AMENDATORY 36 O.S. 2011, Section 2038, is
20 amended to read as follows:

21 Section 2038. A. If an order for liquidation or rehabilitation
22 of ~~an~~ a member insurer domiciled in this state has been entered, the
23 receiver appointed under such order shall have a right to recover on
24 behalf of the member insurer, from any affiliate that controlled it,

1 the amount of distributions, other than stock dividends paid by the
2 member insurer on its capital stock, made at any time during the
3 five (5) years preceding the petition for liquidation or
4 rehabilitation subject to the limitations of subsections B through D
5 of this section.

6 B. No such dividend shall be recoverable if the member insurer
7 shows that when paid the distribution was lawful and reasonable, and
8 that the member insurer did not know and could not reasonably have
9 known that the distribution might adversely affect the ability of
10 the member insurer to fulfill its contractual obligations.

11 C. Any person who was an affiliate that controlled the member
12 insurer at the time the distributions were paid shall be liable up
13 to the amount of distributions he received. Any person who was an
14 affiliate that controlled the member insurer at the time the
15 distributions were declared, shall be liable up to the amount of
16 distributions he would have received if they have been paid
17 immediately. If two ~~(2)~~ persons are liable with respect to the same
18 distributions, they shall be jointly and severally liable.

19 D. The maximum amount recoverable under this subsection shall
20 be the amount needed in excess of all other available assets of the
21 insolvent insurer to pay the contractual obligations of the
22 insolvent insurer.

23 E. If any person liable under subsection C of this section is
24 insolvent, all its affiliates that controlled it at the time the

1 dividend was paid shall be jointly and severally liable for any
2 resulting deficiency in the amount recovered from the insolvent
3 affiliate.

4 SECTION 12. AMENDATORY 36 O.S. 2011, Section 2043, is
5 amended to read as follows:

6 Section 2043. A. No person, including ~~an~~ a member insurer,
7 agent or affiliate of ~~an~~ a member insurer, shall make, publish,
8 disseminate, circulate or place before the public, or cause directly
9 or indirectly to be made, published, disseminated, circulated or
10 placed before the public, in any newspaper, magazine or other
11 publication, or in the form of a notice, circular, pamphlet, letter
12 or poster, or over any radio station or television station, or in
13 any other way, any advertisement, announcement or statement which
14 uses the existence of the Oklahoma Life and Health Insurance
15 Guaranty Association of this state for the purpose of sales,
16 solicitation or inducement to purchase any form of insurance or
17 other coverage covered by the Oklahoma Life and Health Insurance
18 Guaranty Association Act. Provided, however, that this section
19 shall not apply to the Oklahoma Life and Health Insurance Guaranty
20 Association or any other entity which does not sell or solicit
21 insurance or coverage by a health maintenance organization.

22 B. ~~Prior to May 1, 1988, the~~ The Association shall ~~prepare~~ have
23 a summary document describing the general purposes and current
24 limitations of the Association and complying with subsection C of

1 this section. This document shall ~~be~~ have been submitted to, and
2 approved by, the Insurance Commissioner ~~by May 1, 1988, for~~
3 ~~approval.~~ Sixty (60) days after receiving such approval, no member
4 insurer shall deliver a policy or contract described in paragraph 1
5 of subsection B of Section 2025 of this title to a policy ~~or~~ owner,
6 contract owner, certificate holder or enrollee unless the document
7 is delivered to the policy or contract holder prior to or at the
8 time of delivery of the policy or contract, except if subsection D
9 of this section applies. The document should also be available upon
10 request by a ~~policyholder~~ policy owner, contract owner, certificate
11 holder or enrollee. The distribution, delivery or contents or
12 interpretation of this document shall not mean that either the
13 policy or the contract or the holder thereof would be covered in the
14 event of impairment or insolvency of a member insurer. The
15 description document shall be revised by the Association as
16 amendments to the act may require. Failure to receive this document
17 does not give the policyholder, contract holder, certificate holder,
18 enrollee or insured any greater rights than those stated in this
19 act.

20 C. The document prepared under subsection B of this section
21 shall contain a clear and conspicuous disclaimer on its face. The
22 Commissioner shall promulgate a rule establishing the form and
23 content of the disclaimer. The disclaimer shall:
24

1 1. State the name and address of the life and health insurance
2 guaranty association and insurance department;

3 2. Prominently warn the policy ~~or~~ owner, contract owner,
4 certificate holder or enrollee that the Life and Health Insurance
5 Guaranty Association may not cover the policy or contract or, if
6 coverage is available, it will be subject to substantial
7 limitations, exclusions and conditioned on continued residence in
8 the state;

9 3. State that the member insurer and its agents are prohibited
10 by law from using the existence of the Oklahoma Life and Health
11 Insurance Guaranty Association for the purpose of sales,
12 solicitation or inducement to purchase any form of insurance or
13 health maintenance organization coverage;

14 4. Emphasize that the policy or contract holder should not rely
15 on coverage under the Oklahoma Life and Health Insurance Guaranty
16 Association when selecting an insurer;

17 5. Provide other information as directed by the Commissioner.

18 D. No insurer or agent may deliver a policy or contract
19 described in paragraph 1 of subsection B of Section 2025 of this
20 title, but excluded under subparagraph a of paragraph 2 of
21 subsection B of Section 2025 of this title from coverage under ~~this~~
22 ~~act~~ the Oklahoma Life and Health Insurance Guaranty Association Act,
23 unless the insurer or agent, prior to or at the time of delivery,
24 gives the policy ~~or~~ owner, contract owner, certificate holder or

1 enrollee a separate written notice which clearly and conspicuously
2 discloses that the policy or contract is not covered by the Life and
3 Health Insurance Guaranty Association. The Commissioner shall by
4 rule specify the form and content of the notice.

5 SECTION 13. AMENDATORY 36 O.S. 2011, Section 6913, as
6 amended by Section 19, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2018,
7 Section 6913), is amended to read as follows:

8 Section 6913. A. 1. Before issuing any certificate of
9 authority, the Insurance Commissioner shall require that the health
10 maintenance organization have an initial net worth of One Million
11 Five Hundred Thousand Dollars (\$1,500,000.00) and that the HMO shall
12 thereafter maintain the minimum net worth required under paragraph 2
13 of this subsection.

14 2. Except as provided in paragraphs 3 and 4 of this subsection,
15 every health maintenance organization shall maintain a minimum net
16 worth equal to the greater of:

17 a. One Million Five Hundred Thousand Dollars

18 (\$1,500,000.00),

19 b. two percent (2%) of annual premium revenues as
20 reported on the most recent annual financial statement
21 filed with the Commissioner on the first One Hundred
22 Fifty Million Dollars (\$150,000,000.00) of premium and
23 one percent (1%) of annual premium on the premium in
24

1 excess of One Hundred Fifty Million Dollars

2 (\$150,000,000.00),

3 c. an amount equal to the sum of three (3) months of
4 uncovered health care expenditures as reported on the
5 most recent financial statement filed with the
6 Commissioner, or

7 d. an amount equal to the sum of:

8 (1) eight percent (8%) of annual health care
9 expenditures, except those paid on a capitated
10 basis or managed hospital payment basis, as
11 reported on the most recent financial statement
12 filed with the Commissioner, and

13 (2) four percent (4%) of annual hospital expenditures
14 paid on a managed hospital payment basis, as
15 reported on the most recent financial statement
16 filed with the Commissioner.

17 3. Every health maintenance organization licensed before
18 November 1, 2003, shall maintain a minimum net worth of the greater
19 of Seven Hundred Fifty Thousand Dollars (\$750,000.00) or:

20 a. twenty-five percent (25%) of the amount required by
21 paragraph 2 of this subsection by December 31, 2003,

22 b. fifty percent (50%) of the amount required by
23 paragraph 2 of this subsection by December 31, 2004,
24

1 c. seventy-five percent (75%) of the amount required by
2 paragraph 2 of this subsection by December 31, 2005,
3 and

4 d. one hundred percent (100%) of the amount required by
5 paragraph 2 of this subsection by December 31, 2006.

6 4. a. In determining net worth, no debt shall be considered
7 fully subordinated unless the subordination clause is
8 in a form acceptable to the Commissioner. An interest
9 obligation relating to the repayment of any
10 subordinated debt shall be similarly subordinated.

11 b. The interest expenses relating to the repayment of a
12 fully subordinated debt shall be considered covered
13 expenses.

14 c. A debt incurred by a note meeting the requirements of
15 this section, and otherwise acceptable to the
16 Insurance Commissioner, shall not be considered a
17 liability and shall be recorded as equity.

18 B. 1. Unless otherwise provided below, each health maintenance
19 organization shall deposit with the Commissioner or, at the
20 discretion of the Commissioner, with any organization or trustee
21 acceptable to the Commissioner through which a custodial or
22 controlled account is utilized, cash, securities, or any combination
23 of these or other measures that are acceptable to the Commissioner,
24

1 which at all times shall have a value of not less than Five Hundred
2 Thousand Dollars (\$500,000.00).

3 2. The deposit shall be an admitted asset of the health
4 maintenance organization in the determination of net worth.

5 3. All income from deposits shall be an asset of the
6 organization. A health maintenance organization that has made a
7 securities deposit may withdraw that deposit or any part thereof
8 after making a substitute deposit of cash, securities, or any
9 combination of these or other measures of equal amount and value.
10 Any securities shall be approved by the Commissioner before being
11 deposited or substituted.

12 4. The deposit shall be used to protect the interests of the
13 health maintenance organization's enrollees and to ensure
14 continuation of health care services to enrollees ~~of a health~~
15 ~~maintenance organization that is in rehabilitation or conservation.~~
16 ~~The Commissioner may use the deposit for administrative costs~~
17 ~~directly attributable to a receivership or liquidation.~~ If a health
18 maintenance organization is placed in receivership or liquidation,
19 the deposit shall be an asset subject to the provisions of the
20 Uniform Insurers Liquidation Act.

21 5. The Insurance Commissioner may reduce or eliminate the
22 deposit requirement if a health maintenance organization deposits
23 with the Commissioner or other official body of the state or
24 jurisdiction of domicile for the protection of all subscribers and

1 enrollees of the health maintenance organization, wherever located,
2 cash, acceptable securities or surety, and delivers to the
3 Commissioner a certificate to that effect, duly authenticated by the
4 appropriate state official holding the deposit.

5 C. 1. Every health maintenance organization shall, when
6 determining liabilities, include an amount estimated in the
7 aggregate to provide for:

8 a. any unearned premium,

9 b. the payment of all claims for incurred health care
10 expenditures, whether reported or unreported, that are
11 unpaid and for which the organization is or may be
12 liable, and

13 c. the expense of adjustment or settlement of those
14 claims.

15 2. The liabilities shall be computed in accordance with rules
16 promulgated by the Commissioner upon reasonable consideration of the
17 ascertained experience and character of the health maintenance
18 organization.

19 D. 1. Every contract between a health maintenance organization
20 and a participating provider of health care services shall be in
21 writing and shall provide that, in the event the health maintenance
22 organization fails to pay for health care services as set forth in
23 the contract, a subscriber or an enrollee shall not be liable to the
24 provider for any sums owed by the health maintenance organization.

1 2. In the event that the participating provider contract has
2 not been reduced to writing as required by this subsection or that
3 the contract fails to contain the required prohibition, the
4 participating provider shall not collect or attempt to collect from
5 a subscriber or an enrollee sums owed by the health maintenance
6 organization.

7 3. No participating provider or the provider's agent, trustee
8 or assignee may maintain an action at law against a subscriber or
9 enrollee to collect sums owed by the health maintenance
10 organization.

11 E. The Commissioner shall require that each health maintenance
12 organization have a plan for handling insolvency that allows for
13 continuation of benefits for the duration of the contract period for
14 which premiums have been paid and continuation of benefits to
15 subscribers or enrollees who are confined on the date of insolvency
16 in an inpatient facility until their discharge or expiration of
17 benefits. In considering such a plan, the Commissioner may require:

18 1. Insurance to cover the expenses to be paid for continued
19 benefits after an insolvency;

20 2. Provisions in provider contracts that obligate the provider
21 to provide services for the duration of the period after the health
22 maintenance organization's insolvency for which premium payment has
23 been made and until the enrollees' discharge from inpatient
24 facilities;

1 3. Insolvency reserves;

2 4. Acceptable letters of credit; or

3 5. Any other arrangements to ensure continuation of benefits as
4 specified above.

5 F. An agreement to provide health care services between a
6 provider and a health maintenance organization shall require that if
7 the provider terminates the agreement, the provider shall give the
8 organization at least ninety (90) days' advance notice of such
9 termination.

10 SECTION 14. REPEALER 36 O.S. 2011, Sections 6914, 6921,
11 and 6932, are hereby repealed.

12 SECTION 15. This act shall become effective November 1, 2019.

13 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
14 March 25, 2019 - DO PASS AS AMENDED
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