

ENGROSSED HOUSE
BILL NO. 2093

BY: WIDENER

AN ACT RELATING TO INSURANCE; CREATING THE ASSUMPTION REINSURANCE ACT; PROVIDING SHORT TITLE; STATING PURPOSE; PROVIDING SCOPE OF APPLICATION; DEFINING TERMS; PROVIDING FOR NOTICE; PROVIDING POLICYHOLDER RIGHTS; PROVIDING FOR ACCEPTANCE, REJECTION AND DISAPPROVAL OF TRANSFER; PROVIDING FOR TRANSFER BY DIFFERENT FORM OF CONSENT IN CERTAIN CIRCUMSTANCES; STATING EFFECT OF TRANSFER; MAKING ACT APPLICABLE TO AGREEMENTS ENTERED INTO ON OR AFTER CERTAIN DATE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 712 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall constitute a part of the Insurance Code and shall be known and may be cited as the "Assumption Reinsurance Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 713 of Title 36, unless there is created a duplication in numbering, reads as follows:

The purpose of the Assumption Reinsurance Act is to provide for the regulation of the transfer and novation of contracts of insurance by way of assumption reinsurance, define assumption reinsurance, and establish notice and disclosure requirements which

protect and define the rights and obligations of policyholders, regulators and the parties to assumption reinsurance agreements.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 714 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Assumption Reinsurance Act applies to any insurer authorized in this state which transfers the obligations or risks or both obligations and risks on contracts of insurance written or assumed in this state to another insurer pursuant to an assumption reinsurance agreement.

B. The Assumption Reinsurance Act does not apply to:

1. Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks or both obligations and risks under the contracts of insurance subject to the reinsurance agreement;

2. The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;

3. The transfer of contracts of insurance pursuant to mergers or consolidations of two or more insurers to the extent that those transactions are regulated by statute;

4. Any insurer subject to a judicial order of liquidation or rehabilitation;

5. Any transfer of contracts of insurance which the Commissioner determines is in the best interests of the policyholders; or

6. Any state insurance guaranty association.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 715 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Assumption Reinsurance Act:

1. "Assuming insurer" means the insurer which acquires an insurance obligation or risk or both obligation and risk from the transferring insurer pursuant to an assumption reinsurance agreement.

2. "Assumption reinsurance agreement" means any contract which both:

- a. Transfers insurance obligations or risks or both obligations and risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and
- b. Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks or both obligations and risks under such contracts are extinguished.

3. "Contract of insurance" means any written agreement between an insurer and policyholder pursuant to which the insurer, in exchange for premium or other consideration, agrees to assume an obligation or risk or obligation and risk of the policyholder or to make payments on behalf of or to the policyholder or its beneficiaries; it shall include all property, casualty, life, health, accident, surety, title, and annuity business authorized to be written pursuant to the insurance laws of this state.

4. "Notice of transfer" means the written notice to policyholders required by subsection A of Section 5 of this act.

5. "Policyholder" means any individual or entity which has the right to terminate or otherwise agree to alter the terms of a contract of insurance. "Policyholder" includes, but is not limited to, any person issued a group certificate in force on the proposed effective date of the assumption under a group insurance contract if

the certificate vests in that person rights against the insurer that the group contract holder cannot terminate, other than the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Section 601 et seq. of the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C., Section 1661 et seq.

6. "Transferring insurer" means the insurer which transfers an insurance obligation or risk or both obligation and risk to an assuming insurer pursuant to an assumption reinsurance agreement.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 716 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Notice to Policyholders.

1. The transferring insurer shall provide or cause to be provided to each policyholder by first class mail, addressed to the policyholder's last-known address or to the address to which premium notices or other policy documents are sent, a notice of transfer.

2. The notice of transfer shall state or provide:

- a. The date the transfer and novation of the policyholder's contract of insurance is proposed to take place;
- b. The name and address and telephone number of the assuming and transferring insurer;
- c. That the policyholder has the right to either consent to or reject the transfer and novation;
- d. The procedures and time limit for consenting to or rejecting the transfer and novation;
- e. A summary of any effect that consenting to or rejecting the transfer and novation will have on the rights of the policyholder;
- f. The states in which the assuming insurer is licensed and the fact that the transfer may affect the guaranty

association coverage for the policyholder or regulatory recourse;

- g. The name and address of the person at the transferring insurer to whom the policyholder should send the written statement of acceptance or rejection of the transfer and novation; and
- h. The address and telephone number of the insurance department in the state where the policyholder resides so that the policyholder may call that insurance department for further information regarding the financial condition of the assuming insurer.

3. Notice in a form identical or substantially similar to the form provided in this paragraph shall be deemed to comply with the requirements of paragraph 2 of this subsection.

NOTICE OF TRANSFER

IMPORTANT: THIS NOTICE AFFECTS YOUR CONTRACT RIGHTS. PLEASE READ IT CAREFULLY.

Transfer of Policy

The (insert name) Insurance Company has agreed to replace us as your insurer under (insert policy/certificate name and number) effective (insert date). The (insert name) Insurance Company's principal place of business is (insert address) and certain financial information concerning the company is attached. You may obtain additional information concerning (insert name) Insurance Company from reference materials in your local library or by contacting your Insurance Commissioner at (insert address).

The (insert name) Insurance Company is licensed to write this coverage in the following states: (insert states)

If the (insert name) Insurance Company is not licensed in the state in which you reside, this transfer may affect your guaranty fund protection or your Insurance Commissioner's ability to assist you with any matters concerning the company.

Your Rights

You may choose to consent to or reject the transfer of your policy to (insert name) Insurance Company. If you want your policy transferred, you must notify us in writing immediately by signing and returning the enclosed pre-addressed, postage-paid card or by writing to us at:

(Insert name, address and facsimile number of contact person.)

Payment of your premium to the assuming company or other correspondence to the assuming company regarding this policy will constitute written acceptance of the transaction.

If you reject the transfer, you may keep your policy with us or exercise any option under your policy. If we do not receive your written acceptance by (insert date), you will as a matter of law, have rejected the transfer.

Effect of Transfer

If you accept this transfer, (insert name) Insurance Company will be your insurer. It will have direct responsibility to you for the payment of all claims, benefits and for all other policy obligations. We will no longer have any obligations to you.

If you accept this transfer, you should make all premium payments and claims submissions to (insert name) Insurance Company and direct all questions to (insert name) Insurance Company.

Your continued satisfaction with the insurance policy you have chosen is of utmost importance to us. If you have any further questions about this agreement, you may contact (insert name of transferring insurer) Insurance or (insert name of assuming insurer) Insurance.

Sincerely,

Chairman of the Board

(insert name of transferring insurer) (insert name of assuming insurer)

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 717 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every policyholder shall have the right to reject the transfer and novation of their contracts of insurance. Policyholders electing to reject the assumption transaction shall provide the transferring insurer with the pre-addressed, postage-paid response card or other written notice that the assumption is rejected, collectively referred to as the "Response Card", no later than sixty (60) days after the date on which the transferring insurer mails the notice required pursuant to subsection A of Section 5 of this act.

B. Payment of the next premium to the assuming company or written communication regarding this contract of insurance to the assuming company by the policyholder, such as change of address, change of beneficiary, and other information shall be deemed to indicate acceptance by the policyholder of the transfer to the assuming insurer and a novation shall be deemed to be effected.

C. After no fewer than six (6) months from the mailing of the notice of transfer required under subsection B of Section 5 of this act, if positive consent to the transfer and assumption has not been received and consent has not been deemed to have occurred under subsection B of this section, the transferring company shall send a second notice of transfer as specified in subsection B of Section 5 of this act. If the policyholder does not reject the transfer during the six-month period immediately following the date on which the transferring insurer mails the second and final notice of transfer, the policyholder's consent will be deemed to have occurred and novation of the contract will be effected.

D. The transferring insurer shall be deemed to have received the Response Card on the date the notice is postmarked. A policyholder also may send the Response Card by facsimile or other

electronic transmission or by registered mail, express delivery or courier service, in which case the Response Card shall be deemed to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

E. The Insurance Commissioner shall not approve the transfer unless the assuming company is licensed in the state, unless the policies represent less than one-half of one percent (1/2 of 1%) of the policies subject to the assumption or the policies are subject to a special deposit and other restrictions promulgated by statute.

F. If a company is deemed by the Insurance Commissioner to be in hazardous condition or is under a supervision order, rehabilitation, liquidation, conservation or receivership, and the transfer of policies is in the best interest of the policyholders, as determined by the Commissioner, a transfer may be effected notwithstanding the provisions of the Assumption Reinsurance Act by using a different form of consent by policyholders. This consent may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the Commissioner.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 718 of Title 36, unless there is created a duplication in numbering, reads as follows:

If a policyholder consents to the transfer pursuant to Section 6 of this act, or if a transfer is effected pursuant to subsection F of Section 6 of this act, there shall be a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer shall thereby be relieved of all insurance obligations or risks or both obligations and risks transferred under the assumption reinsurance agreement and the assuming insurer shall become directly and solely liable to the policyholder for those insurance obligations or risks or obligations and risks.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 719 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Assumption Reinsurance Act shall apply to all assumption reinsurance agreements entered into on or after January 1, 1993.

SECTION 9. This act shall become effective January 1, 1993.

Passed the House of Representatives the 10th day of March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate