

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1237

By: Hastings

AS INTRODUCED

An Act relating to the State Insurance Fund; enacting the State Insurance Fund Loss Portfolio Transfer Act; providing short title; stating legislative findings; defining terms; creating a Loss Portfolio Transfer Board; providing for the membership, powers, and duties of the Board; requiring a portion of the special surplus; providing for the distribution of the state share of the special surplus; stating duties of the Contingency Review Board with regard to a loss portfolio transfer; providing procedures whereby the Supreme Court may issue declaratory judgments regarding the validity of a loss portfolio transfer agreement; giving the Board of Managers of the State Insurance Fund certain duties under certain circumstances; providing for codification; and declaring an emergency.

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 154 of Title 85, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "State Insurance Fund Loss Portfolio Transfer Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 155 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Legislature established the State Insurance Fund in 1933 for the purpose of ensuring access to workers' compensation insurance for Oklahoma businesses. The Legislature finds that the workers' compensation is now fully competitive and capable of meeting the compensation needs of state workers. The Legislature

further finds that encouraging a competitive market and placing the State Insurance Fund in the role of a true insurer of last resort would better serve the state. Thus, the Legislature seeks a loss portfolio transfer of the claims against and losses of the State Insurance Fund.

B. Since the State Insurance Fund was established, on behalf of the taxpayers of Oklahoma, the state has been instrumental in administering, managing, and overseeing the State Insurance Fund as a state entity. In addition, the state has, since the 1970s, consistently been the State Insurance Fund's largest policyholder. Thus, the Legislature finds that, if there is a loss portfolio transfer, the state is entitled to fifty percent (50%) of the remaining unencumbered funds, or "special surplus", for the state's management and administrative role with regard to the Fund.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 156 of Title 85, unless there is created a duplication in numbering, reads as follows:

As used in the State Insurance Fund Loss Portfolio Transfer Act:

1. "Board" means the Loss Portfolio Transfer Board;
2. "Loss portfolio transfer" means the transfer, by the State Insurance Fund, of all future obligations on losses occurring prior to the effective date of the transfer to a third-party reinsurer;
3. "Permitted transferee" means any stock corporation, mutual association, or other concern authorized to transact the business of workers' compensation insurance in this state pursuant to the Oklahoma Insurance Code and the Workers' Compensation Act and having a Best rating of A minus or better;
4. "Proposed agreement" means one or more contracts regarding the loss portfolio transfer and all other agreements contemplated by or referred to in the contract regarding such transfer; and

5. "Special surplus" means the unencumbered funds remaining in the State Insurance Fund after the loss portfolio transfer is complete.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 157 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Loss Portfolio Transfer Board" for the purpose of executing a loss portfolio transfer of the claims against and losses of the State Insurance Fund. All members shall have at least ten (10) years of experience in the insurance industry. The Board shall consist of seven (7) members as follows:

1. The Governor shall appoint three members;

2. The Speaker of the House of Representatives shall appoint two members; and

3. The President Pro Tempore of the Senate shall appoint two members.

B. The Board shall prepare and disseminate a request for proposal for the loss portfolio transfer to be made available to prospective bidders by September 1, 1998, with all completed bids to be submitted no later than November 1, 1998. The loss portfolio transfer shall be completed by December 31, 1998. The Board shall accept the best bid for the State of Oklahoma and the State Insurance Fund policyholders. The Board must consider the qualifications of the permitted transferee, including, but not limited to, the following:

1. The permitted transferee must be able to indemnify all prior claims;

2. The permitted transferee must be solvent and have adequate reserves to handle the acquired business; and

3. The permitted transferee must be properly licensed to operate as a workers' compensation insurance carrier in the State of Oklahoma.

C. The Board may enter into and consummate, under terms and conditions agreed to by the Contingency Review Board, with the advice of the Department of Central Purchasing, an agreement in the name of the State of Oklahoma for the loss portfolio transfer subject to the following conditions:

1. The Board shall have received before the effective date of the transfer an opinion from a nationally recognized investment banking firm that the loss portfolio transfer is fair from a financial point of view;

2. The Board shall have received before the effective date of the transfer an opinion from a nationally recognized actuarial firm which:

- a. sets forth the amount of reserves that must be retained by the State Insurance Fund to remain solvent,
- b. sets forth the amount of unencumbered funds, or special surplus, available for distribution, and
- c. states that the assets of the State Insurance Fund transferred to a permitted transferee are adequate to permit the payment of all liabilities assumed by the permitted transferee based upon sound actuarial principles;

3. The Attorney General shall review any contractual agreement between the State Insurance Fund Trust and any entity authorized to transact business in the State of Oklahoma regarding the loss portfolio transfer. The Attorney General shall disapprove the agreement if it is determined that provisions of the agreement are not consistent with state law;

4. The Board shall have determined before the effective date of the transfer that the consideration for the assets to be transferred is among the best offers by a qualified bidder as provided for in this section, is fair from a financial point of view, and is

sufficient such that the credit of the state shall not have been granted to, nor in aid of any person, association, or corporation, public or private;

5. The Board may hire a consultant and receive information or recommendations from any other person considered appropriate by the Board for purposes of assisting the Board in making a final decision in evaluating one or more offers from any person seeking to become or establish a permitted transferee for purposes of acquiring the losses of the State Insurance Fund pursuant to this section; and

6. The Board shall give due consideration to minority, women, and disabled-owned businesses and prospective bidders that have minority, women, and disabled-owned business participation. A prospective bidder shall indicate in its proposal the name, address and amount of equity participation for each minority, woman, or disabled-owned and operated business that is included as part or all of the bidding group.

D. Any agreement between the Board and a permitted transferee for the loss portfolio transfer is exempt from the requirements of the Oklahoma Central Purchasing Act and any rules adopted by the State Insurance Fund pursuant to the Administrative Procedures Act.

E. The Board, in furtherance of the transactions permitted under this section, may do any of the following:

1. Sell, convey, lease, exchange, transfer, or otherwise dispose of the losses and claims of the State Insurance Fund; or

2. Have and exercise all powers necessary or convenient to effect or complete the transactions permitted under this section.

F. The Board for and on behalf of the State of Oklahoma and subject to the requirements of this section shall have the right in its sole and absolute discretion to establish the terms and conditions of any proposal for the loss portfolio transfer on the basis of its own criteria, to evaluate those proposals by its own criteria, and to reject any or all proposals without assigning any

reasons subject to the requirements and conditions set forth in this act. The Board for and on behalf of the State of Oklahoma expressly reserves the right, without giving any reasons and without any liability therefor, at any time and in any respect, to amend or terminate any activities with respect to the loss portfolio transfer, commence or terminate discussions with any or all persons seeking to purchase the losses of the State Insurance Fund, reject any or all proposals to acquire the losses of the State Insurance Fund, and to negotiate and consummate the loss portfolio transfer with any qualified person.

G. Not less than thirty (30) days before the transfer is consummated with a permitted transferee, the Board shall make a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor providing the name and business address of each bidder; the amount, terms, and conditions of each respective bid; and the copies of the opinions required by this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 158 of Title 85, unless there is created a duplication in numbering, reads as follows:

The loss portfolio transfer is contingent upon the state receiving fifty percent (50%) of the special surplus set forth in Section 2 of this act. Fifty percent (50%) of the special surplus shall be the property of the State of Oklahoma for its role as manager and administrator of said Fund. The remaining portion of the special surplus shall be distributed equitably to the policyholders of record since 1980 pursuant to a formula determined by the Board. Any portion of the special surplus not claimed by such policyholders within one (1) year of the loss portfolio transfer shall escheat to the state. The state's portion of the special surplus shall be credited as follows:

1. One-third shall be deposited in the State Treasury to the credit of the Teachers' Retirement System of Oklahoma;

2. One-fourth shall be deposited in the State Treasury to the credit of the Oklahoma Firefighters Pension and Retirement Fund;

3. One-sixth shall be deposited in the State Treasury to the credit of the Special Indemnity Fund; and

4. The remainder of the state's portion of the special surplus shall be deposited in the State Treasury to the credit of the General Revenue Fund.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 159 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Board, prior to acceptance, shall submit to the Contingency Review Board for review the proposed agreement regarding the loss portfolio transfer to a permitted transferee and an independent statement as to the fairness of said proposed agreement for the State of Oklahoma. The Contingency Review Board, upon receipt of the proposed agreement, shall meet within fifteen (15) business days to review the proposed agreement. Unless the Contingency Review Board disapproves the proposed agreement, the proposed agreement may be executed, but no sale of the State Insurance Fund shall become effective until after Supreme Court approval pursuant to subsection B of this section.

B. 1. If a proposed agreement is not disapproved by the Contingency Review Board pursuant to subsection A of this section, the Board, within thirty (30) calendar days after the time for Contingency Review Board action has expired, may file a petition with the Supreme Court of Oklahoma for a declaratory judgment determining the validity of the proposed agreement. The review of the Court shall be based upon the exercise of any of the powers, rights, privileges, and functions conferred upon the Board or the State Insurance Fund, as applicable, under the Workers' Compensation

Act and Oklahoma laws. Exclusive original jurisdiction is conferred upon the Supreme Court to hear and determine such petitions. The Supreme Court shall give such petitions precedence over other business of the Court except habeas corpus proceedings.

2. Notice of the hearing of such a petition shall be given by a notice published in a newspaper of general circulation in this state that on a day specified the Supreme Court will hear the petition to approve the proposed agreement and enter a declaratory judgment. The notice shall be published one (1) time not less than ten (10) days prior to the date specified for the hearing. The notice shall inform property owners, taxpayers, citizens, and all persons having or claiming any right, title, or interest in the proposed agreement or properties or funds to be affected by the implementation of the proposed agreement, or affected in any way thereby, that they may file protests against the approval of the proposed agreement, and be present at the hearing to contest the legality of the proposed agreement. The hearing may be adjourned from time to time at the discretion of the Court.

3. If the Court is satisfied that the proposed agreement is in accordance with Oklahoma laws, the Court shall enter a declaratory judgment approving and declaring the proposed agreement to be valid and conclusive as to the Board, the State Insurance Fund, and all other parties to the proposed agreement; and, upon petition of the Board, shall issue an order permanently enjoining all persons described in the notice required by this subsection from thereafter instituting any action or proceeding contesting the validity of the proposed agreement. A declaratory judgment rendered pursuant to this subsection shall have the force and effect of a final judgment or decree and shall be incontestable in any court in this state.

C. No cause of action on behalf of any holder of a policy of insurance issued by the State Insurance Fund shall lie against the permitted transferee arising out of the loss portfolio transfer or

other transactions permitted under this section, except that this subsection shall not limit the rights or remedies of the holder of a policy of insurance issued by the State Insurance Fund and assumed by the permitted transferee to contest the insurance coverage arising under a policy of insurance issued by the State Insurance Fund. No cause of action on behalf of any holder of a policy of insurance issued by the State Insurance Fund shall lie against the State of Oklahoma or any political subdivision of the state arising out of the loss portfolio transfer permitted under this act, or arising under policies of insurance issued by the State Insurance Fund.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160 of Title 85, unless there is created a duplication in numbering, reads as follows:

If the Board of Managers of the State Insurance Fund enters into an agreement or contract for a loss portfolio transfer as authorized in this act which results in a reduction in the number of employees of the State Insurance Fund, the following shall occur:

1. The Board of Managers of the State Insurance Fund shall conduct a reduction-in-force to terminate employees, regardless of status, whose positions are eliminated because of a contract or agreement with a permitted transferee for a loss portfolio transfer; and

2. The State Insurance Fund shall develop and implement a staffing component, which may include contracts for professional services, to ensure that the terms of the loss portfolio transfer or other agreements between the Board and other entities are fulfilled, particularly in regard to the missions of the State Insurance Fund. The State Insurance Fund staff shall provide any staff assistance required by the Loss Portfolio Transfer Board authorized by this act.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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