

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 1101

By: Sparks of the Senate

and

Mulready of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; creating the Insurance
12 Business Transfer Act; declaring purpose of act;
13 defining terms; establishing court jurisdiction and
14 venue for court proceedings; authorizing certain
15 court actions; establishing procedures for notice
16 from certain person; specifying certain terms of
17 response after notice; instructing Insurance
18 Commissioner to give certain notice under certain
19 circumstances; establishing rules and procedures for
20 filing application for Insurance Business Transfer
21 Plan; providing requirements for certain independent
22 expert opinion report; instructing Insurance
23 Commissioner to review application within certain
24 time period; instructing Commissioner to authorize
Plan to the court in certain circumstances; requiring
Commissioner to notify applicants of need for change
to Plan in certain circumstances; providing timeline
for applicants implementing certain changes to Plan;
authorizing termination of application after certain
time period; instructing Commissioner to provide
certain notification to applicant; establishing
procedures for court filing of Plan; naming
Commissioner as party to certain court proceedings;
requiring applicant to file certain motion; requiring
applicant to submit certain notification to
policyholders; establishing procedures for approval
of Plan by court; authorizing withdrawal of Plan at

1 any time; establishing elements of implementation
2 order for Plan; establishing procedures for denial of
3 Plan by court; authorizing Commissioner to promulgate
4 certain rules; requiring certain insurers to submit
5 to jurisdiction of Commissioner; requiring certain
6 fees and expenses be paid to Department; authorizing
7 the Commissioner to require certain reimbursement for
8 certain compensation; authorizing Commissioner to
9 hire certain persons; authorizing Commissioner to
10 petition court for dismissal of Plan or suspend or
11 revoke certain certificate of authority in certain
12 circumstances; providing for codification; and
13 providing an effective date.

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

17 SECTION 1. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1681 of Title 36, unless there
19 is created a duplication in numbering, reads as follows:

20 This act shall be known and may be cited as the "Insurance
21 Business Transfer Act".

22 SECTION 2. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1682 of Title 36, unless there
24 is created a duplication in numbering, reads as follows:

25 This act is adopted to provide a basis and procedures for the
26 transfer and statutory novation of policies from a transferring
27 insurer to an assuming insurer by way of an Insurance Business
28 Transfer without the affirmative consent of policyholders or
29 reinsureds. The novation is effected by court order. This act
30 establishes the requirements for notice and disclosure and standards

1 and procedures for the approval of the transfer and novation by the
2 Oklahoma Insurance Commissioner and the District Court of Oklahoma
3 County pursuant to an Insurance Business Transfer Plan. This act
4 does not limit or restrict other means of effecting a transfer or
5 novation.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1683 of Title 36, unless there
8 is created a duplication in numbering, reads as follows:

9 1. "Affiliate" has the meaning ascribed to such term in Section
10 1631 of Title 36 of the Oklahoma Statutes.

11 2. "Applicant" means a transferring insurer or reinsurer
12 applying under Section 6 of this act.

13 3. "Assuming insurer" means an insurer domiciled in the State
14 of Oklahoma that assumes or seeks to assume policies from a
15 transferring insurer pursuant to this act. An assuming insurer may
16 be a company established pursuant to the Oklahoma Captive Insurance
17 Company Act.

18 4. "Court" means the District Court of Oklahoma County,
19 Oklahoma.

20 5. "Department" means the Oklahoma Insurance Department.

21 6. "Commissioner" means the Oklahoma Insurance Commissioner.

22 7. "Implementation order" means an order issued by the Court
23 under Section 6 of this act.

1 8. "Insurance Business Transfer" means a transfer and novation
2 in accordance with this act. Insurance Business Transfers will
3 transfer insurance obligations or risks, or both, of existing or in-
4 force contracts of insurance or reinsurance from a transferring
5 insurer to an assuming insurer. Once approved pursuant to this act,
6 the Insurance Business Transfer will effect a novation of the
7 transferred contracts of insurance or reinsurance with the result
8 that the assuming insurer becomes directly liable to the
9 policyholders of the transferring insurer and the transferring
10 insurer's insurance obligations or risks, or both, under the
11 contracts are extinguished.

12 9. "Insurance Business Transfer Plan" or "Plan" means the plan
13 submitted to the Department to accomplish the transfer and novation
14 pursuant to an Insurance Business Transfer, including any associated
15 transfer of assets and rights from or on behalf of the transferring
16 insurer to the assuming insurer.

17 10. "Independent expert" means an impartial person who has no
18 financial interest in either the assuming insurer or transferring
19 insurer, has not been employed by or acted as an officer, director,
20 consultant or other independent contractor for either the assuming
21 insurer or transferring insurer within the past twelve (12) months,
22 is not appointed by the Commissioner to assist in any capacity in
23 any proceeding initiated pursuant to Article 18 or Article 19 of
24 Title 36 of the Oklahoma Statutes and is receiving no compensation

1 in connection with the transaction governed by this act other than a
2 fee based on a fixed or hourly basis that is not contingent on the
3 approval or consummation of an Insurance Business Transfer and
4 provides proof of insurance coverage that is satisfactory to the
5 Commissioner.

6 11. "Insurer" means an insurance or surety company, including a
7 reinsurance company, and shall be deemed to include a corporation,
8 company, partnership, association, society, order, individual or
9 aggregation of individuals engaging in or proposing or attempting to
10 engage in any kind of insurance or surety business, including the
11 exchanging of reciprocal or inter-insurance contracts between
12 individuals, partnerships and corporations.

13 12. "Policy" means a policy, contract or certificate of
14 insurance or a contract of reinsurance pursuant to which the insurer
15 agrees to assume an obligation or risk, or both, of the policyholder
16 or to make payments on behalf of, or to, the policyholder or its
17 beneficiaries, and shall include property, casualty, life, health
18 and any other line of insurance the Commissioner finds via
19 regulation is suitable for an insurance business transfer.

20 13. "Policyholder" means an insured or a reinsured under a
21 policy that is part of the subject business.

22 14. "Subject business" means the policy or policies that are
23 the subject of the Insurance Business Transfer Plan.
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1 15. "Transfer and novation" means the transfer of insurance
2 obligations or risks, or both, of existing or in-force policies from
3 a transferring insurer to an assuming insurer, and is intended to
4 effect a novation of the transferred policies with the result that
5 the assuming insurer becomes directly liable to the policyholders of
6 the transferring insurer on the transferred policies and the
7 transferring insurer's insurance obligations or risks, or both,
8 under the transferred policies are extinguished.

9 16. "Transferring insurer" means an insurer or reinsurer that
10 transfers and novates or seeks to transfer and novate obligations or
11 risks, or both, under one or more policies to an assuming insurer
12 pursuant to an Insurance Business Transfer Plan.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1684 of Title 36, unless there
15 is created a duplication in numbering, reads as follows:

16 A. The court considering applications brought under the
17 Insurance Business Transfer Act shall have the same jurisdiction as
18 a court order under Article 19 of Title 36 of the Oklahoma Statutes.

19 B. Venue for all court proceedings under this act shall lie in
20 the District Court of Oklahoma County, Oklahoma.

21 C. Notwithstanding any other provision of law, the court may
22 issue any order, process, or judgment that is necessary or
23 appropriate to carry out the provisions of this act. No provision
24 of this act shall be construed to preclude the court from, on its

1 own motion, taking any action or making any determination necessary
2 or appropriate to enforce or implement court orders or rules, or to
3 prevent an abuse of power.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1685 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Whenever notice is required to be given by the applicant
8 under the Insurance Business Transfer Act and except as otherwise
9 permitted or directed by the court or the Insurance Commissioner,
10 the applicant shall, within fifteen (15) days of the event
11 triggering the requirement, cause transmittal of the notice:

12 1. By first-class mail, postage prepaid to the chief insurance
13 regulator in each jurisdiction in which the applicant:

- 14 a. holds or has ever held a certificate of authority, and
- 15 b. in which policies that are part of the subject
16 business were issued or policyholders currently
17 reside;

18 2. By certified first-class mail, postage prepaid to the
19 National Conference of Insurance Guaranty Funds, the National
20 Organization of Life and Health Insurance Guaranty Associations and
21 all state insurance guaranty associations for the states in which
22 the applicant:

- 23 a. holds or has ever held a certificate of authority, and

1 b. in which policies that are part of the subject
2 business were issued or policyholders currently
3 reside;

4 3. To reinsurers of the applicant pursuant to the notice
5 provisions of the reinsurance agreements applicable to the policies
6 that are part of the subject business, or where an agreement has no
7 provision for notice, by internationally recognized delivery
8 service;

9 4. By United States mail, first-class postage prepaid to all
10 policyholders holding policies that are part of the subject
11 business, at their last-known address as indicated by the records of
12 the applicant or to the address to which premium notices or other
13 policy documents are sent. A notice of transfer shall also be sent
14 to the transferring insurer's agents or brokers of record on the
15 subject business; and

16 5. By publication in a newspaper of general circulation in the
17 state in which the applicant has its principal place of business and
18 in such other publications that the Commissioner requires.

19 B. If notice is given in accordance with this section, any
20 orders under this act shall be conclusive with respect to all
21 intended recipients of the notice, whether or not they receive
22 actual notice.

1 C. Where this act requires that the applicant provide notice
2 but the Commissioner has been named receiver of the applicant, the
3 Commissioner shall provide the required notice.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1686 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Application Procedure.

8 1. An Insurance Business Transfer Plan must be filed by the
9 applicant with the Insurance Commissioner for his or her review and
10 approval. The Plan must contain the information set forth below or
11 an explanation as to why the information is not included. The Plan
12 may be supplemented by other information deemed necessary by the
13 Commissioner:

- 14 a. the name, address and telephone number of the
15 transferring insurer and the assuming insurer and
16 their respective direct and indirect controlling
17 persons, if any,
- 18 b. summary of the Insurance Business Transfer Plan,
- 19 c. identification and description of the subject
20 business,
- 21 d. most recent audited financial statements and statutory
22 annual and quarterly reports of the transferring
23 insurer and assuming insurer filed with their
24 domiciliary regulator,

- e. the most recent actuarial report and opinion that quantify the liabilities associated with the subject business,
- f. pro-forma financial statements showing the projected statutory balance sheet, results of operations and cash flows of the assuming insurer for the three years following the proposed transfer and novation,
- g. officers' certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals and authorizations regarding the Insurance Business Transfer Plan and completed all necessary and appropriate actions relating thereto,
- h. proposal for plan implementation and administration, including the form of notice to be provided under the Insurance Business Transfer Plan to any policyholder whose policy is part of the subject business,
- i. full description as to how such notice shall be provided,
- j. description of any reinsurance arrangements that would pass to the assuming insurer under the Insurance Business Transfer Plan,

- 1 k. description of any guarantees or additional
2 reinsurance that will cover the subject business
3 following the transfer and novation,
- 4 l. a statement describing the assuming insurer's proposed
5 investment policies and any contemplated third-party
6 claims management and administration arrangements,
- 7 m. evidence of approval or nonobjection of the transfer
8 from the chief insurance regulator of the state of the
9 transferring insurer's domicile, and
- 10 n. an opinion report from an independent expert, selected
11 by the Commissioner from a list of at least two
12 nominees submitted jointly by the transferring insurer
13 and the assuming insurer, to assist the Commissioner
14 and the court in connection with their review of the
15 proposed transaction. Should the Commissioner, in his
16 or her sole discretion, reject the nominees, he or she
17 may appoint the independent expert. The report shall
18 provide the following:
- 19 (1) a statement of the independent expert's
20 professional qualifications and descriptions of
21 the experience that qualifies him or her as an
22 expert suitable for the engagement,
- 23 (2) whether the independent expert has, or has had,
24 direct or indirect interest in the transferring

1 or assuming insurer or any of their respective
2 affiliates,

3 (3) the scope of the report,

4 (4) a summary of the terms of the Insurance Business
5 Transfer Plan to the extent relevant to the
6 report,

7 (5) documents, reports and other material information
8 the independent expert has considered in
9 preparing the report and whether any information
10 requested was not provided,

11 (6) the extent to which the independent expert has
12 relied on information provided by and the
13 judgment of others,

14 (7) the people on whom the independent expert has
15 relied and why, in his or her opinion, such
16 reliance is reasonable,

17 (8) the independent expert's opinion of the likely
18 effects of the Insurance Business Transfer Plan
19 on policyholders and claimants, distinguishing
20 between:

21 (a) transferring policyholders and claimants,

22 (b) policyholders and claimants of the
23 transferring insurer whose policies will not
24 be transferred, and

1 (c) policyholders and claimants of the assuming
2 insurer,

3 (9) for each opinion that the independent expert
4 expresses in the report the facts and
5 circumstances supporting the opinion, and

6 (10) consideration as to whether the security position
7 of policyholders that are affected by the
8 Insurance Business Transfer are materially
9 adversely affected by the transfer.

10 2. The independent expert's opinion report as required by
11 subparagraph n of paragraph 1 of this subsection shall include, but
12 not be limited to, a review of the following:

13 a. analysis of the transferring insurer's actuarial
14 review of reserves for the subject business to
15 determine the reserve adequacy,

16 b. analysis of the financial condition of the
17 transferring and assuming insurers and the effect the
18 transfer will have on the financial condition of each
19 company,

20 c. review of the plans or proposals the assuming insurer
21 has with respect to the administration of the policies
22 subject to the proposed transfer,
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- d. whether the proposed transfer has a material, adverse impact on the policyholders and claimants of the transferring and the assuming insurers,
- e. analysis of the assuming insurer's corporate governance structure to ensure that there is proper board and management oversight and expertise to manage the subject business, and
- f. any other information that the Commissioner requests in order to review the Insurance Business Transfer.

3. The Commissioner shall have sixty (60) business days from the date of receipt of a complete Insurance Business Transfer Plan to review the Plan to determine if the applicant is authorized to submit it to the court. The Commissioner may extend the sixty-day review period for an additional thirty (30) business days.

4. The Commissioner shall authorize the submission of the Plan to the court unless he or she finds that the Insurance Business Transfer would have a material adverse impact on the interests of policyholders or claimants that are part of the subject business.

5. If the Commissioner determines that the Insurance Business Transfer would have a material adverse impact on the interests of policyholders or claimants that are part of the subject business, he or she shall notify the applicant and specify any modifications, supplements or amendments and any additional information or documentation with respect to the Plan that must be provided to the

1 Commissioner before he or she will allow the applicant to proceed
2 with the court filing.

3 6. The applicant shall have thirty (30) days from the date the
4 Commissioner notifies him or her, pursuant to paragraph 5 of this
5 subsection, to file an amended Insurance Business Transfer Plan
6 providing the modifications, supplements or amendments and
7 additional information or documentation as requested by the
8 Commissioner. If necessary the applicant may request in writing an
9 extension of time of thirty (30) days. If the applicant does not
10 make an amended filing within the time period provided for in this
11 paragraph, including any extension of time granted by the
12 Commissioner, the Insurance Business Transfer Plan filing will
13 terminate and a subsequent filing by the applicant will be
14 considered a new filing which shall require compliance with all
15 provisions of this act as if the prior filing had never been made.

16 7. The Commissioner's review period in paragraph 2 of this
17 subsection shall recommence when the modification, supplement,
18 amendment or additional information requested in paragraph 5 of this
19 subsection is received.

20 8. If the Commissioner determines that the Plan may proceed
21 with the court filing, the Commissioner shall confirm that fact in
22 writing to the applicant.

23 B. Application to the court for approval of the Insurance
24 Business Transfer Plan.

1 1. Within thirty (30) days after notice from the Commissioner
2 that the applicant may proceed with the court filing, the applicant
3 shall apply to the court for approval of the Insurance Business
4 Transfer Plan. Upon written request by the applicant, the
5 Commissioner may extend the period for filing an application with
6 the court for an additional thirty (30) days.

7 2. The applicant shall inform the court of the reasons why he
8 or she petitions the court to find no material adverse impact to
9 policyholders or claimants affected by the proposed transfer.

10 3. The application shall be in the form of a verified petition
11 for implementation of the Insurance Business Transfer Plan in the
12 court. The petition shall include the Insurance Business Transfer
13 Plan and shall identify any documents and witnesses which the
14 applicant intends to present at a hearing regarding the petition.

15 4. The Commissioner shall be a party to the proceedings before
16 the court concerning the petition and shall be served with copies of
17 all filings pursuant to the Rules for District Courts of Oklahoma.
18 The Commissioner's position in the proceeding shall not be limited
19 by his or her initial review of the Plan.

20 5. Following the filing of the petition, the applicant shall
21 file a motion for a scheduling order setting a hearing on the
22 petition.

23 6. Within fifteen (15) days after receipt of the scheduling
24 order, the applicant shall cause notice of the hearing to be

1 provided in accordance with the notice provisions of Section 5 of
2 this act. Following the date of distribution of the notice, there
3 shall be a sixty-day comment period.

4 7. The notice to policyholders shall state or provide:

- 5 a. the date and time of the approval hearing,
- 6 b. the name, address and telephone number of the assuming
7 insurer and transferring insurer,
- 8 c. that a policyholder may comment on or object to the
9 transfer and novation,
- 10 d. the procedures and deadline for submitting comments or
11 objections on the Plan,
- 12 e. a summary of any effect that the transfer and novation
13 will have on the policyholder's rights,
- 14 f. a statement that the assuming insurer is authorized,
15 as provided in this section, to assume the subject
16 business and that court approval of the Plan shall
17 extinguish all rights of policyholders under policies
18 that are part of the subject business against the
19 transferring insurer,
- 20 g. that policyholders shall not have the opportunity to
21 opt out of or otherwise reject the transfer and
22 novation,
- 23 h. contact information for the Insurance Department where
24 the policyholder may obtain further information, and

1 i Information on how an electronic copy of the Insurance
2 Business Transfer Plan may be accessed. In the event
3 policyholders are unable to readily access electronic
4 copies, the applicant shall provide hard copies by
5 first-class mail.

6 8. Any person, including by their legal representative, who
7 considers himself, herself or itself to be adversely affected can
8 present evidence or comments to the court at the approval hearing.
9 However, such comment or evidence shall not confer standing on any
10 person. Any person participating in the approval hearing must
11 follow the process established by the court and shall bear his or
12 her own costs and attorney's fees.

13 C. Approval of the Insurance Business Transfer Plan.

14 1. After the comment period pursuant to paragraph 6 of
15 subsection B of this section has ended the Insurance Business
16 Transfer Plan shall be presented by the applicant for approval by
17 the court.

18 2. At any time before the court issues an order approving the
19 Insurance Business Transfer Plan, the applicant may withdraw the
20 Insurance Business Transfer Plan without prejudice.

21 3. If the court finds that the implementation of the Insurance
22 Business Transfer Plan would not materially adversely affect the
23 interests of policyholders or claimants that are part of the subject
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1 business, the court shall enter an implementation order. The
2 implementation order shall:

3 a. order implementation of the Insurance Business
4 Transfer Plan,

5 b. order a statutory novation with respect to all
6 policyholders or reinsureds and their respective
7 policies and reinsurance agreements under the subject
8 business, including the extinguishment of all rights
9 of policyholders under policies that are part of the
10 subject business against the transferring insurer, and
11 providing that the transferring insurer shall have no
12 further rights, obligations, or liabilities with
13 respect to such policies, and that the assuming
14 insurer shall have all such rights, obligations, and
15 liabilities as if it, instead of the transferring
16 insurer, were the original insurer of such policies,

17 c. release the transferring insurer from any and all
18 obligations or liabilities under policies that are
19 part of the subject business,

20 d. authorize and order the transfer of property or
21 liabilities, including, but not limited to the ceded
22 reinsurance of transferred policies and contracts on
23 the subject business, notwithstanding any
24 nonassignment provisions in any such reinsurance

1 contracts. The subject business shall vest in and
2 become liabilities of the assuming insurer,

3 e. order that the applicant provide notice of the
4 transfer and novation in accordance with the notice
5 provisions in Section 5 of this act, and

6 f. make such other provisions with respect to incidental,
7 consequential and supplementary matters as are
8 necessary to assure the Insurance Business Transfer
9 Plan is fully and effectively carried out.

10 4. If the court finds that the Insurance Business Transfer Plan
11 should not be approved, the court by its order may:

12 a. deny the petition, or

13 b. provide the applicant leave to file an amended
14 Insurance Business Transfer Plan and petition.

15 5. Nothing in this section in any way effects the right of
16 appeal of any party.

17 D. Implementation of Insurance Business Transfer Plan.

18 The Commissioner shall have the authority to promulgate rules to
19 effectuate the provisions of the Insurance Business Transfer Act.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1687 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

23 Insurers subject to this act consent to the jurisdiction of the
24 Insurance Commissioner with regard to ongoing oversight of

1 operations, management and solvency relating to the transferred
2 business, including the authority of the Commissioner to conduct
3 financial analysis and examinations.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1688 of Title 36, unless there
6 is created a duplication in numbering, reads as follows:

7 A. At the time of filing its application with the Insurance
8 Commissioner for review and approval of an Insurance Business
9 Transfer Plan, the applicant shall pay a nonrefundable fee to the
10 Insurance Department in the amount of Ten Thousand Dollars
11 (\$10,000.00).

12 B. In the Commissioner's discretion, in connection with the
13 Department's participation in the proceedings undertaken pursuant to
14 the Insurance Business Transfer Act, the applicant shall reimburse
15 the Department for any compensation and benefits paid to the
16 personnel of the Department for time spent engaged in the
17 proceedings, including but not limited to, examiners, actuaries,
18 attorneys, managers and paraprofessionals.

19 C. The Commissioner may retain independent attorneys,
20 appraisers, actuaries, certified public accountants, or other
21 professionals and specialists to assist Department personnel in
22 connection with the review required by the Insurance Business
23 Transfer Act, the cost of which shall be borne by the applicant.

1 D. The applicant shall pay the expenses of the Department and
2 its authorized consultants incurred in fulfilling their obligations
3 under this act, including the actual expenses of the Department or
4 the expenses and compensation of any consultants retained by the
5 Department.

6 E. Failure to pay any of the requisite fees or reimbursements
7 within thirty (30) days of demand shall be grounds for the
8 Commissioner to request that the court dismiss the petition for
9 approval of the Insurance Business Transfer Plan prior to the filing
10 of an implementation order by the court or, if after the filing of
11 an implementation order, the Commissioner may suspend or revoke the
12 assuming insurer's certificate of authority to transact insurance
13 business in this state.

14 SECTION 9. This act shall become effective November 1, 2018.
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