HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

ENGROSSED SENATE
BILL NO. 606 By: Sparks of the Senate

and

Mulready of the House

[run-off insurance - notice - commutation plans - notification of Commissioner - guaranty funds - Commissioner - rehabilitation or liquidation - board of directors - promulgate rules - codification - 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 1941 of Title 36, unless there is created a duplication in numbering, reads as follows:

For the purpose of this act:

1. "Applicant" means a commercial run-off insurer applying under Section 1943 of Title 36 of the Oklahoma Statutes;

2. "Assessment deficit" means the amount that the assessment for the previous year under Section 1944 of Title 36 of the Oklahoma

Statutes is less than, and "assessment surplus" is the amount that the assessment for the previous year exceeds:

a. the run-off insurer's proportionate share of regulatory expenditure for the previous year, if the run-off insurer was domiciled in Oklahoma on March 15 of the previous year, or

b. the redomestication expenditure for the previous year attributable to the run-off insurer, if the run-off insurer was not domiciled in Oklahoma on March 15 of the previous year;

3. "Assumption policyholder" means a policyholder whose policy is reinsured under an assumption reinsurance agreement between the applicant and a reinsurer;

4. "Assumption reinsurance agreement" means any contract which transfers insurance obligations and/or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer and 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 and/or risks under the contracts are extinguished, subject to the following:

a. the agreement may be conditioned upon the Commissioner's entry of an implementation order, and

b. if any policy subject to the agreement is protected through a guaranty association, then the assuming insurer must have been and be licensed, and must have been and be a member of the guaranty association, in all states known to the applicant in which either:

(1) any property covered under the policy has a permanent situs, or

(2) the policyholder resided while the policy was in force;

5. "Class of creditors" means:

a. all voting policyholders, including those without known claims,

b. voting creditors, other than policyholders, or

c. any separate class of creditors as the Commissioner may in his or her discretion determine should approve the commutation plan;

6. "Commercial run-off insurer" means:

a. a run-off insurer domiciled in Oklahoma whose business, excluding all business subject to an assumption reinsurance agreement, includes only the reinsuring of any line(s) of business other than life and/or the insuring of any line(s) of business other than life, workers' compensation, and personal lines insurance, or

b. an Oklahoma domestic insurance company meeting the requirements of subparagraph a of this paragraph and formed or re-activated for the sole purpose of entering into a voluntary restructuring under this act and whose liabilities consist of commercial liabilities transferred to said company with the approval of the Commissioner and pursuant to the regulations issued by the Department under this act. The amount of the commercial liabilities transferred must be less than or equal to the amount of assets transferred to the newly formed or re-activated company;

7. "Commissioner" means the Insurance Commissioner of Oklahoma;

8. "Commutation plan" means a plan for extinguishing the outstanding liabilities of a commercial run-off insurer;

9. "Creditor" means:

a. any person that has a claim against the applicant, or

b. a policyholder other than an assumption policyholder;

10. "Department" means the Oklahoma Insurance Department;

11. "Guaranty association" means the Oklahoma Property and Casualty Insurance Guaranty Association created by the Oklahoma Property and Casualty Insurance Guaranty Association Act, Article 20A of Title 36 of the Oklahoma Statutes, and the Oklahoma Life and Health Insurance Guaranty Association, created by the Oklahoma Life

and Health Insurance Guaranty Association Act, Article 20B of Title 36 of the Oklahoma Statutes, and any other similar entity now or after this created by the legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or after this created by the legislature of any other state;

12. "Implementation order" means an order under subsection C of Section 1943 of Title 36 of the Oklahoma Statutes;

13. "Insurer" has the meaning given in Section 1901 of Title 36 of the Oklahoma Statutes;

14. "Person" has the meaning given in Section 104 of Title 36 of the Oklahoma Statutes and any similar entity or any combination acting in concert;

15. "Personal lines insurance" means insurance issued for personal, family, or household purposes;

16. "Policy" means a contract of insurance or a contract of reinsurance;

17. "Policyholder" means an insured or a reinsured of the insurer;

18. "Proportionate share" means, for a particular run-off insurer as of December 31 of the previous year, the ratio of:

a. the gross assets of that run-off insurer, to

b. the gross assets of all run-off insurers, other than those that were not domiciled in Oklahoma on March 15 of that calendar year;

19. "Redomestication expenditure" means, for any calendar year:

a. the amount that the Department's expenditures attributable to the regulation of run-off insurers increases as a result of any run-off insurer redomiciling to Oklahoma on or after March 15 of that year, less

b. filing fees, examination costs, and any other fees in relation to insurance regulation in this state paid to this state by run-off insurers that redomiciled to Oklahoma on or after March 15 of that year, but excluding any premium taxes;

20. "Regulatory expenditure" means, for any calendar year:

a. the amount of the Department's expenditures attributable to the regulation of run-off insurers domiciled in Oklahoma on March 15 of that year, less

b. filing fees, examination costs, and any other fees in relation to insurance regulation in this state paid to this state by run-off insurers domiciled in Oklahoma on March 15 of that year, but excluding any premium taxes;

21. "Run-off insurer" means an insurer that:

a. is domiciled in Oklahoma,

b. has liabilities under policies for property and casualty lines of business,

c. has ceased underwriting new business, and

d. is only renewing ongoing business to the extent required by law or by contract.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1942 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Wherever in this chapter notice is required, the applicant shall, within ten (10) days of the event triggering the requirement, cause transmittal of the notice:

1. By first class mail and facsimile to the insurance regulator in each jurisdiction in which the applicant is doing business;

2. By first class mail to the national conference of insurance guaranty funds and all guaranty associations for the states in which the applicant is doing business;

3. Pursuant to the notice provisions of reinsurance agreements or, where an agreement has no provision for notice, by first class mail to all reinsures of the applicant;

4. By first class mail to all insurance agents or insurance producers of the applicant;

5. By first class mail to all persons known or reasonably expected to have claims against the applicant including all

policyholders, at their last known address as indicated by the records of the applicant;

6. By first class mail to federal, state, and local government agencies and instrumentalities as their interests may arise; and

7. By publication in a newspaper of general circulation in the state in which the applicant has its principal place of business and in any other locations that the Commissioner deems appropriate.

B. If notice is given in accordance with this section, any orders under this act shall be conclusive with respect to all claimants and policyholders, whether or not they received notice.

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1943 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Application. Any commercial run-off insurer may apply to the Commissioner for an order implementing a commutation plan.

B. Procedure.

1. The applicant shall give notice of the application and proposed commutation plan.

2. All creditors shall be given the opportunity to vote on the plan.

3. All creditors, assumption policyholders, reinsurers, and guaranty associations shall be provided with access to the same information relating to the proposed plan and shall be given the opportunity to file comments or objections with the Commissioner.

4. Approval of a commutation plan requires consent of:

a. fifty percent (50%) of each class of creditors, and

b. the holders of seventy-five percent (75%) in value of the liabilities owed to each class of creditors.

C. Implementation order.

1. The Commissioner shall enter an implementation order if:

a. the plan is approved under paragraph 4 of subsection B of this section, and

b. the Commissioner determines that implementation of the commutation plan would not materially adversely affect either the interests of objecting creditors or the interests of assumption policyholders.

2. The implementation order shall:

a. order implementation of the commutation plan,

b. subject to any limitations in the commutation plan, enjoin all litigation in all jurisdictions between the applicant and creditors other than with the leave of the Commissioner,

c. require all creditors to submit information requested by the bar date specified in the plan,

d. require that upon a noticed application, the applicant obtain Commissioner approval before making any payments to creditors other than, to the extent permitted under the commutation plan, payments in the ordinary course of business, this approval to be based upon a showing that the applicant's assets exceed the payments required under the terms of the commutation plan as determined based upon the information submitted by creditors under subparagraph c of this paragraph,

e. release the applicant of all obligations to its creditors upon payment of the amounts specified in the commutation plan,

f. require quarterly reports from the applicant to the Commissioner regarding progress in implementing the plan, and

g. be binding upon the applicant and upon all creditors and owners of the applicant, whether or not a particular creditor or owner is affected by the commutation plan or has accepted it or has filed any information on or before the bar date, and whether or not a creditor or owner ultimately receives any payments under the plan.

3. The applicant shall give notice of entry of the order.

D. Applicable law and procedure with respect to dispute resolution procedures.

1. Any dispute resolution procedure in any commutation plan brought by a ceding insurance creditor to challenge the value of its claim assessed in any commutation plan will be consistent with the provisions of title 9, United States code;

2. The adjudicator and the court, if applicable, hearing any appeal from an adjudication proceeding where the ceding insurance creditor challenges the value of its claim assessed by the applicant in its commutation plan, shall:

a. not attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract,

b. not apply the laws of Oklahoma to reinsurance agreements of ceding insurers not domiciled in Oklahoma unless the reinsurance contract provides that Oklahoma law shall apply,

c. apply the law applicable to the underlying contract between the ceding insurer and the applicant or, if the underlying reinsurance contract has no choice of law provision, the law of the state of domicile of the ceding insurer shall apply.

E. Order of dissolution or discharge.

1. Upon completion of the commutation plan, the applicant shall advise the Commissioner.

2. The Commissioner shall then enter an order that:

a. is effective upon filing with the Commissioner proof that the applicant has provided notice of entry of the order,

b. transfers those liabilities subject to an assumption reinsurance agreement to the assumption reinsurer, thereby notating the original policy by substituting the assumption reinsurer for the applicant and releasing the applicant of any liability relating to the transferred liabilities,

c. assigns each assumption reinsurer the benefit of reinsurance on transferred liabilities, except that the assignment shall only be effective upon the consent of the reinsurer if either:

(1) the reinsurance contract requires that consent, or

(2) the consent would otherwise be required under applicable law, and

d. either:

(1) the applicant be discharged from the proceeding without any liabilities, or

(2) the applicant be dissolved.

3. The applicant shall provide notice of entry of the order.

F. Reinsurance. Nothing in this act shall be construed as authorizing the applicant, or any other entity, to compel payment from a reinsurer on the basis of estimated incurred but not reported losses or loss expenses, or case reserves for unpaid losses and loss expenses.

G. Modifications to plan. After provision of notice and an opportunity to object, and upon a showing that some material factor in approving the plan has changed, the Commissioner may modify or change a commutation plan, except that upon entry of an order under paragraph 2 of subsection E of this section, there shall be no recourse against the applicant's owners absent a showing of fraud.

H. Role of guaranty funds; relationship to rehabilitation/liquidation statutes.

1. The guaranty funds shall have the right to intervene in any and all proceedings under this section; provided, that notwithstanding any provision of Title 36 of the Oklahoma Statutes, any action taken by a commercial run-off insurer to restructure pursuant to this act, including the formation or re-activation of an insurance company for the sole purpose of entering into a voluntary restructuring shall not affect the guaranty fund coverage existing on the business of such commercial run-off insurer prior to the taking of such action.

2. If, at any time, the conditions for placing an insurer in rehabilitation or liquidation specified in Article 19 of Title 36 of the Oklahoma Statutes exist, the Commissioner may make application to the court to be named statutory receiver of the applicant pursuant to the procedure set forth in Section 1903 of Title 36 of the Oklahoma Statutes.

3. If no implementation order has been entered, then upon being named receiver, the Commissioner may request, and if requested, the court shall order, that the proceeding under this act be converted to a rehabilitation or liquidation pursuant to Article 19 of Title 36 of the Oklahoma Statutes If an implementation order has already been entered, then the court may order a conversion upon a showing that some material factor in approving the original order has changed.

4. The court may enter an order naming the Commissioner as receiver only upon finding either that one or more grounds for rehabilitation or liquidation specified in Article 19 of Title 36 of the Oklahoma Statutes exist or that the applicant has materially failed to follow the commutation plan or any other Commissioner instructions.

5. Unless and until the Commissioner is named receiver, the board of directors or other controlling body of the applicant shall remain in control of the applicant.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1944 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Application fee. Upon application to the Commissioner pursuant to Section 1943 of Title 36 of the Oklahoma Statutes, the applicant shall pay a fee to the Department in the amount of Ten Thousand Dollars ($10,000.00).

1. In connection with the Departments' participation in the proceedings undertaken pursuant to Section 1943 of Title 36 of the Oklahoma Statutes, the applicant shall be assessed the following expenses:

   a. one hundred fifty percent (150%) of the total salaries and benefits paid to the personnel of the Department engaged in the proceedings, including, but not limited to, examiners, actuaries, attorneys, managers, and para-professionals, less any salary reimbursements, and

   b. the Department may retain independent attorneys, appraisers, actuaries, certified public accountants, or other professionals and specialists to assist Department personnel in connection with the proceedings, the cost of which shall be borne by the applicant.

B. Ongoing assessment.

1. Every March 15, the Commissioner shall assess each run-off insurer an amount equal to the greater of:

a. one thousand dollars ($1,000), or

b. the sum of that run-off insurer's proportionate share of estimated regulatory expenditure for that calendar year and that run-off insurer's assessment deficit, less its assessment surplus.

2. The calculation of the assessment surplus or deficit shall reflect the total cost of any examinations, which shall be borne by the companies so examined, and shall include the following expenses:

a. one hundred fifty percent (150%) of the total salaries and benefits paid to the examining personnel of the Department engaged in those examinations, including, but not limited to, examiners, actuaries, attorneys, managers, and para-professionals, less any salary reimbursements,

b. all reasonable technology costs related to the examination process. Technology costs shall include the actual cost of software and hardware utilized in the examination process and the cost of training examination personnel in the proper use of the software or hardware, and

c. all necessary and reasonable education and training costs incurred by the state to maintain the proficiency and competence of the examining personnel. All such costs shall be incurred in accordance with appropriate state of Oklahoma regulations, guidelines and procedures.

3. Each run-off insurer shall pay the assessment to the Department on or before the following fifteenth (15th) day of April.

4. An insurer that redomiciles to Oklahoma after March 15 of any year and that qualifies as a run-off insurer upon redomestication shall pay an assessment equal to the Commissioner's estimate of redomestication expenditure attributable to that run-off insurer.

5. All assessments collected pursuant to this section shall be in addition to any taxes and fees otherwise payable to the state.

C. Pools. Except with respect to policy renewals required by law or contract, no run-off insurer shall be subject to any assessment or assignment in connection with any residual market, fair plan, or assigned-risk plan mechanisms in this state.

D. Scope. This section shall only apply to run-off insurers that cease underwriting new business after January 1, 2018, or that were not domiciled in Oklahoma on January 1, 2018.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1945 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall promulgate rules that may be necessary to effectuate the purposes of this act. The Department shall not accept applications under Section 1933 of Title 36 of the Oklahoma Statutes until the time that these rules have been promulgated.

SECTION 6. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/29/2017 - DO PASS, As Amended.