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AS AMENDED

By: Sparks

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

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

This act is adopted to provide a basis and procedures for the transfer and statutory novation of policies from a transferring insurer to an assuming insurer by way of an Insurance Business Transfer without the affirmative consent of policyholders or reinsureds. The novation is effected by court order. This act

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

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

10 1. "Affiliate" has the meaning ascribed to such term in Section
11 1631 of Title 36 of the Oklahoma Statutes.

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

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

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

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

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

23 7. "Implementation order" means an order issued by the Court
24 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 and is receiving no compensation in connection with the transaction
23 governed by this act other than a fee based on a fixed or hourly
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1 basis and that is not contingent on the approval or consummation of
2 an Insurance Business Transfer.

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

10 12. "Policy" means a policy, contract or certificate of
11 insurance or a contract of reinsurance pursuant to which the insurer
12 agrees to assume an obligation or risk, or both, of the policyholder
13 or to make payments on behalf of, or to, the policyholder or its
14 beneficiaries, and shall include property, casualty, life, health,
15 long term care, accident, surety, title and annuity business.

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

18 14. "Subject business" means the policy or policies that are
19 the subject of the Insurance Business Transfer Plan.

20 15. "Transfer and novation" means the transfer of insurance
21 obligations or risk, or both, of existing or in-force policies from
22 a transferring insurer to an assuming insurer, and is intended to
23 effect a novation of the transferred policies with the result that
24 the assuming insurer becomes directly liable to the policyholders of

1 the transferring insurer on the transferred policies and the
2 transferring insurer's insurance obligations or risk, or both, under
3 the transferred policies are extinguished.

4 16. "Transferring insurer" means an insurer or reinsurer that
5 transfers and novates or seeks to transfer and novate obligation or
6 risk, or both, under one or more policies to an assuming insurer
7 pursuant to an Insurance Business Transfer Plan.

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

11 A. The court considering applications brought under the
12 Insurance Business Transfer Act shall have the same jurisdiction as
13 a court order under Article 19 of this title.

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

16 C. Notwithstanding any other provision of law, the court may
17 issue any order, process, or judgment that is necessary or
18 appropriate to carry out the provisions of this act. No provision
19 of this act shall be construed to preclude the court from, on its
20 own motion, taking any action or making any determination necessary
21 or appropriate to enforce or implement court orders or rules, or to
22 prevent an abuse of power.

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

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

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

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

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

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

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

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

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

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

20 C. Where this act requires that the applicant provide notice
21 but the Commissioner has been named receiver of the applicant, the
22 Commissioner shall provide the required notice.
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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1686 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Application Procedure.

5 1. An Insurance Business Transfer Plan must be filed by the
6 applicant with the Department for its review and approval. The Plan
7 must contain the information set forth below or an explanation as to
8 why the information is not included. The Plan may be supplemented
9 by other information deemed necessary by the Department:

- 10 a. the name, address and telephone number of the
11 transferring insurer and the assuming insurer and
12 their respective direct and indirect controlling
13 persons, if any,
14 b. summary of the Insurance Business Transfer Plan,
15 c. identification and description of the subject
16 business,
17 d. most recent audited financial statements and statutory
18 annual and quarterly reports of the transferring
19 insurer and assuming insurer filed with their
20 domiciliary regulator,
21 e. the most recent actuarial report and opinion that
22 quantifies the liabilities associated with the subject
23 business,
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- 1 f. pro-forma financial statements showing the projected
2 statutory balance sheet, results of operations and
3 cash flows of the assuming insurer for the three years
4 following the proposed transfer and novation,
- 5 g. officers' certificates of the transferring insurer and
6 the assuming insurer attesting that each has obtained
7 all required internal approvals and authorizations
8 regarding the Insurance Business Transfer Plan and
9 completed all necessary and appropriate actions
10 relating thereto,
- 11 h. proposal for plan implementation and administration,
12 including the form of notice to be provided under the
13 Insurance Business Transfer Plan to any policyholder
14 whose policy is part of the subject business,
- 15 i. full description as to how such notice shall be
16 provided,
- 17 j. description of any reinsurance arrangements that would
18 pass to the assuming insurer under the Insurance
19 Business Transfer Plan,
- 20 k. description of any guarantees or additional
21 reinsurance that will cover the subject business
22 following the transfer and novation,
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1. a statement describing the assuming insurer's proposed investment policies and any contemplated third-party claims management and administration arrangements,
- m. evidence of approval or non-objection of the transfer from the chief insurance regulator of the state of the transferring insurer's domicile, and
- n. an opinion from an independent expert, engaged by the applicant to assist the Department and the court in connection with their review of the proposed transaction. The report shall provide the following:
- (1) a statement of the independent expert's professional qualifications and descriptions of the experience that makes him or her suitable for the engagement,
 - (2) whether the independent expert has, or has had, direct or indirect interest in the transferring or assuming insurer or any of their respective affiliates,
 - (3) the scope of the report,
 - (4) a summary of the terms of the Insurance Business Transfer Plan to the extent relevant to the report,
 - (5) documents, reports and other material information the independent expert has considered in

1 preparing the report and whether any information
2 requested was not provided,

3 (6) the extent to which the independent expert has
4 relied on information provided by and the
5 judgment of others,

6 (7) the people on whom the independent expert has
7 relied and why, in his opinion, such reliance is
8 reasonable,

9 (8) the independent expert's opinion of the likely
10 effects of the Insurance Business Transfer Plan
11 on policyholders and claimants, distinguishing
12 between:

13 (a) transferring policyholders and claimants,

14 (b) policyholders and claimants of the
15 transferring insurer whose policies will not
16 be transferred, and

17 (c) policyholders and claimants of the assuming
18 insurer,

19 (9) for each opinion that the independent expert
20 expresses in the report the facts and
21 circumstances supporting the opinion, and

22 (10) consideration as to whether the security position
23 of policyholders that are affected by the
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1 insurance business transfer are materially
2 adversely affected by the transfer.

3 2. The Department shall have sixty (60) days from the date of
4 receipt of the Insurance Business Transfer Plan to review the Plan
5 to determine if the applicant is authorized to submit it to the
6 court. The Department may extend the sixty (60) day review period
7 for an additional thirty (30) business days upon providing written
8 notice to the applicant prior to the expiration of the sixty (60)
9 day review period.

10 3. The Department's review shall include, but not be limited
11 to:

12 a. a review of the independent expert report, including
13 an 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 examination and/or analysis that the Commissioner deems appropriate in order to monitor the financial solvency of the assuming insurer.

4. The Department shall authorize the submission of the Plan to the Court unless it 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 Department 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, the Department 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 Department before the Department will allow the applicant to proceed with the Court filing.

6. The applicant shall have thirty (30) days from the date the Department notifies it pursuant to paragraph 5 of this subsection,

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

12 7. The Department's review period in paragraph 2 of this
13 subsection shall recommence when the modification, supplement,
14 amendment or additional information requested in paragraph 5 of this
15 subsection is received.

16 8. If it determines that the Plan may proceed with the court
17 filing, the Department shall confirm that fact in writing to the
18 applicant.

19 B. Application to the court for approval of the Insurance
20 Business Transfer Plan.

21 1. Within thirty (30) days after notice from the Department
22 that the applicant may proceed with the Court filing, the applicant
23 shall apply to the Court for approval of the Insurance Business
24 Transfer Plan. Upon written request by the applicant, the

1 Department may extend the period for filing an application with the
2 court for an additional thirty (30) days.

3 2. The applicant shall inform the court of the reasons why it
4 petitions the Court to find no material adverse impact to
5 policyholders or claimants affected by the proposed transfer.

6 3. The application shall be in the form of a verified petition
7 for implementation of the Insurance Business Transfer Plan in the
8 court. The petition shall include the Insurance Business Transfer
9 Plan and shall identify documents and witnesses which the applicant
10 intends to present at a hearing regarding the petition.

11 4. The Department shall be a party to the proceedings before
12 the court concerning the petition and shall be served with copies of
13 all filings pursuant to the Rules for District Courts of Oklahoma.
14 The Department's position in the proceeding shall not be limited by
15 its initial review of the Plan.

16 5. Following the filing of the petition, the applicant shall
17 file a motion for a scheduling order setting a hearing on the
18 petition.

19 6. Within fifteen (15) days after receipt of the scheduling
20 order, the applicant shall cause notice of the hearing to be
21 provided in accordance with the notice provisions of Section 5 of
22 this act. Following the date of distribution of the notice, there
23 shall be a sixty (60) day comment period.

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

- a. the date and time of the approval hearing,
- b. the name, address and telephone number of the assuming insurer and transferring insurer,
- c. that a policyholder may comment on or object to the transfer and novation,
- d. the procedures and deadline for submitting comments or objections on the Plan,
- e. a summary of any effect that the transfer and novation will have on the policyholder's rights,
- f. a statement that the assuming insurer is authorized, as provided in this section, to assume the subject business and that court approval of the Plan shall extinguish all rights of policyholders under policies that are part of the subject business against the transferring insurer,
- g. that policyholders shall not have the opportunity to opt out of or otherwise reject the transfer and novation,
- h. contact information for the Department where the policyholder may obtain further information, and
- i. Information on how an electronic copy of the Insurance Business Transfer Plan may be accessed. In the event policyholders are unable to readily access electronic

1 copies, the applicant shall provide hard copies by
2 first class mail;

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

11 C. Approval of the Insurance Business Transfer Plan.

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

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

19 3. If the court finds that the implementation of the Insurance
20 Business Transfer Plan would not materially adversely affect the
21 interests of policyholders or claimants that are part of the subject
22 business, the court shall enter an implementation order. The
23 implementation order shall:
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- 1 a. order implementation of the Insurance Business
2 Transfer Plan,
- 3 b. order a statutory novation with respect to all
4 policyholders or reinsureds and their respective
5 policies and reinsurance agreements under the subject
6 business, including the extinguishment of all rights
7 of policyholders under policies that are part of the
8 subject business against the transferring insurer, and
9 providing that the transferring insurer shall have no
10 further rights, obligations, or liabilities with
11 respect to such policies, and that the assuming
12 insurer shall have all such rights, obligations, and
13 liabilities as if it, instead of the transferring
14 insurer, were the original insurer of such policies,
- 15 c. release the transferring insurer from any and all
16 obligations or liabilities under policies that are
17 part of the subject business,
- 18 d. authorize and order the transfer of property or
19 liabilities, including, but not limited to the
20 outwards reinsurance of transferred policies and
21 contracts on the subject business, notwithstanding any
22 non-assignment provisions in any such reinsurance
23 contracts. The subject business shall vest in and
24 become liabilities of the assuming insurer,

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

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

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

10 a. deny the Petition, or

11 b. provide the applicant leave to file an amended
12 Insurance Business Transfer Plan and Petition.

13 5. Nothing in this section in any way effects the right of
14 appeal of any party.

15 D. Implementation of Insurance Business Transfer Plan.

16 The Commissioner shall have the authority to promulgate
17 reasonable rules for the implementation of an Insurance Business
18 Transfer Plan.

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

22 Insurers subject to this act consent to the jurisdiction of the
23 Department with regard to ongoing oversight of operations,
24 management and solvency relating to the transferred business,

1 including the authority of the Department to conduct financial
2 analysis and examinations.

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

6 A. At the time of application for implementation of an
7 Insurance Business Transfer Plan, the applicant shall pay a
8 nonrefundable fee to the Department in the amount of Ten Thousand
9 Dollars (\$10,000.00) or such lesser amount as the Department shall
10 deem adequate.

11 B. The Department may retain independent attorneys, appraisers,
12 actuaries, certified public accountants, or other professionals and
13 specialists to assist Department personnel in connection with the
14 review required by this act.

15 C. The applicant shall pay the expenses of the Department and
16 its authorized consultants incurred in fulfilling their obligations
17 under this Act, including the actual expenses of the Department or
18 the expenses and compensation of any consultants retained by the
19 Department.

20 D. Failure to pay any of these fees shall be grounds for the
21 Department to request that the court dismiss the petition for
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1 approval of the Insurance Business Transfer Plan prior to final
2 order.

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

4 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
5 February 12, 2018 - DO PASS AS AMENDED
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