

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1101

By: Sparks

AS INTRODUCED

An Act relating to insurance; creating the Insurance Business Transfer Act; declaring purpose of act; defining terms; clarifying court jurisdiction; clarifying venue for court proceedings; authorizing certain court actions; establishing procedures for notice from certain person; specifying certain terms of response after notice; instructing Insurance Commissioner to give certain notice under certain circumstances; establishing rules and procedures for filing application for Insurance Business Transfer Plan; instructing Insurance Department to review application within certain time period; establishing procedures for Department review of application; instructing Department to authorize Plan to the court in certain circumstances; requiring Department 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 Department to provide certain notification to applicant; establishing procedures for court filing of Plan; naming Department 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 any time; establishing elements of implementation order for Plan; establishing procedures for denial of Plan by court; authorizing Commissioner to promulgate certain rules; applying certain insurers to submit to jurisdiction of Department; requiring certain fees and expenses be paid to Department; authorizing Department to hire certain persons; authorizing Department to petition court for dismissal of Plan in

1 certain circumstances; providing for codification;
2 and providing an effective date.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

13 This act is adopted to provide a basis and procedures for the
14 transfer and statutory novation of policies from a transferring
15 insurer to an assuming insurer by way of an Insurance Business
16 Transfer without the affirmative consent of policyholders or
17 reinsureds. The novation is effected by court order. This act
18 establishes the requirements for notice and disclosure and standards
19 and procedures for the approval of the transfer and novation by the
20 Oklahoma Insurance Commissioner and the District Court of Oklahoma
21 County pursuant to an Insurance Business Transfer Plan. This act
22 does not limit or restrict other means of effecting a transfer and
23 novation.

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

4 1. "Affiliate" has the meaning ascribed to such term in Section
5 1631 of Title 36 of the Oklahoma Statutes.

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

8 3. "Assuming insurer" means an insurer domiciled in the State
9 of Oklahoma that assumes or seeks to assume policies from a
10 transferring insurer pursuant to this act. An assuming insurer may
11 be a protected cell company established pursuant to the Oklahoma
12 Captive Insurance Company Act.

13 4. "Court" means the District Court of Oklahoma County,
14 Oklahoma.

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

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

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

19 8. "Insurance Business Transfer" means a transfer and novation
20 in accordance with this act. Insurance Business Transfers will
21 transfer insurance obligations or risks, or both, of existing or in-
22 force contracts of insurance or reinsurance from a transferring
23 insurer to an assuming insurer. Once approved pursuant to this act,
24 the Insurance Business Transfer will effect a novation of the

1 transferred contracts of insurance or reinsurance with the result
2 that the assuming insurer becomes directly liable to the
3 policyholders of the transferring insurer and the transferring
4 insurer's insurance obligations or risks, or both, under the
5 contracts are extinguished.

6 9. "Insurance Business Transfer Plan" or "Plan" means the plan
7 submitted to the Department to accomplish the transfer and novation
8 pursuant to an Insurance Business Transfer, including any associated
9 transfer of assets and rights from or on behalf of the transferring
10 insurer to the assuming insurer.

11 10. "Independent expert" means an impartial person who has no
12 financial interest in either the assuming insurer or transferring
13 insurer, has not been employed by or acted as an officer, director,
14 consultant or other independent contractor for either the assuming
15 insurer or transferring insurer within the past twelve (12) months
16 and is receiving no compensation in connection with the transaction
17 governed by this act other than a fee based on a fixed or hourly
18 basis and that is not contingent on the approval or consummation of
19 an Insurance Business Transfer.

20 11. "Insurer" means an insurance or surety company, including a
21 reinsurance company, and shall be deemed to include a corporation,
22 company, partnership, association, society, order, individual or
23 aggregation of individuals engaging in or proposing or attempting to
24 engage in any kind of insurance or surety business, including the

1 exchanging of reciprocal or inter-insurance contracts between
2 individuals, partnerships and corporations.

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

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

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

13 15. "Transfer and novation" means the transfer of insurance
14 obligations or risk, or both, of existing or in-force policies from
15 a transferring insurer to an assuming insurer, and is intended to
16 effect a novation of the transferred policies with the result that
17 the assuming insurer becomes directly liable to the policyholders of
18 the transferring insurer on the transferred policies and the
19 transferring insurer's insurance obligations or risk, or both, under
20 the transferred policies are extinguished.

21 16. "Transferring insurer" means an insurer or reinsurer that
22 transfers and novates or seeks to transfer and novate obligation or
23 risk, or both, under one or more policies to an assuming insurer
24 pursuant to an Insurance Business Transfer Plan.

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

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

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

9 C. Notwithstanding any other provision of law, the court may
10 issue any order, process, or judgment that is necessary or
11 appropriate to carry out the provisions of this act. No provision
12 of this act shall be construed to preclude the court from, on its
13 own motion, taking any action or making any determination necessary
14 or appropriate to enforce or implement court orders or rules, or to
15 prevent an abuse of power.

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

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

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

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

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

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

16 3. To reinsurers of the applicant pursuant to the notice
17 provisions of the reinsurance agreements applicable to the policies
18 that are part of the subject business, or where an agreement has no
19 provision for notice, by internationally recognized delivery
20 service;

21 4. By United States mail, first class postage prepaid to all
22 policyholders holding policies that are part of the subject
23 business, at their last known address as indicated by the records of
24 the applicant or to the address to which premium notices or other

1 policy documents are sent. A notice of transfer shall also be sent
2 to the transferring insurer's agents or brokers of record on the
3 subject business; and

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

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

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

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

17 A. Application Procedure.

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

- 23 a. the name, address and telephone number of the
24 transferring insurer and the assuming insurer and

- 1 their respective direct and indirect controlling
2 persons, if any,
- 3 b. summary of the Insurance Business Transfer Plan,
- 4 c. identification and description of the subject
5 business,
- 6 d. most recent audited financial statements and statutory
7 annual and quarterly reports of the transferring
8 insurer and assuming insurer filed with their
9 domiciliary regulator,
- 10 e. the most recent actuarial report and opinion that
11 quantifies the liabilities associated with the subject
12 business,
- 13 f. pro-forma financial statements showing the projected
14 statutory balance sheet, results of operations and
15 cash flows of the assuming insurer for the three years
16 following the proposed transfer and novation,
- 17 g. officers' certificates of the transferring insurer and
18 the assuming insurer attesting that each has obtained
19 all required internal approvals and authorizations
20 regarding the Insurance Business Transfer Plan and
21 completed all necessary and appropriate actions
22 relating thereto,
- 23 h. proposal for plan implementation and administration,
24 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,
 - k. description of any guarantees or additional reinsurance that will cover the subject business following the transfer and novation,
 - l. 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,

- 1 (2) whether the independent expert has, or has had,
2 direct or indirect interest in the transferring
3 or assuming insurer or any of their respective
4 affiliates,
5 (3) the scope of the report,
6 (4) a summary of the terms of the Insurance Business
7 Transfer Plan to the extent relevant to the
8 report,
9 (5) documents, reports and other material information
10 the independent expert has considered in
11 preparing the report and whether any information
12 requested was not provided,
13 (6) the extent to which the independent expert has
14 relied on information provided by and the
15 judgment of others,
16 (7) the people on whom the independent expert has
17 relied and why, in his opinion, such reliance is
18 reasonable,
19 (8) the independent expert's opinion of the likely
20 effects of the Insurance Business Transfer Plan
21 on policyholders and claimants, distinguishing
22 between:
23 (a) transferring policyholders and claimants,
24

1 (b) policyholders and claimants of the
2 transferring insurer whose policies will not
3 be transferred, and

4 (c) policyholders and claimants of the assuming
5 insurer,

6 (9) for each opinion that the independent expert
7 expresses in the report the facts and
8 circumstances supporting the opinion, and

9 (10) consideration as to whether the security position
10 of policyholders that are affected by the
11 insurance business transfer are materially
12 adversely affected by the transfer.

13 2. The Department shall have sixty (60) days from the date of
14 receipt of the Insurance Business Transfer Plan to review the Plan
15 to determine if the applicant is authorized to submit it to the
16 court. The Department may extend the sixty (60) day review period
17 for an additional thirty (30) business days upon providing written
18 notice to the applicant prior to the expiration of the sixty (60)
19 day review period.

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

22 a. a review of the independent expert report, including
23 an analysis of the transferring insurer's actuarial
24

- 1 review of reserves for the subject business to
2 determine the reserve adequacy,
- 3 b. analysis of the financial condition of the
4 transferring and assuming insurers and the effect the
5 transfer will have on the financial condition of each
6 company,
- 7 c. review of the plans or proposals the assuming insurer
8 has with respect to the administration of the policies
9 subject to the proposed transfer,
- 10 d. whether the proposed transfer has a material, adverse
11 impact on the policyholders and claimants of the
12 transferring and the assuming insurers,
- 13 e. analysis of the assuming insurer's corporate
14 governance structure to ensure that there is proper
15 board and management oversight and expertise to manage
16 the subject business, and
- 17 f. any other examination and/or analysis that the
18 Commissioner deems appropriate in order to monitor the
19 financial solvency of the assuming insurer.

20 4. The Department shall authorize the submission of the Plan to
21 the Court unless it finds that the Insurance Business Transfer would
22 have a material adverse impact on the interests of policyholders or
23 claimants that are part of the subject business.
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1 5. If the Department determines that the Insurance Business
2 Transfer would have a material adverse impact on the interests of
3 policyholders or claimants that are part of the subject business,
4 the Department shall notify the applicant and specify any
5 modifications, supplements, or amendments and any additional
6 information or documentation with respect to the Plan that must be
7 provided to the Department before the Department will allow the
8 applicant to proceed with the Court filing.

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

22 7. The Department's review period in paragraph 2 of this
23 subsection shall recommence when the modification, supplement,
24

1 amendment or additional information requested in paragraph 5 of this
2 subsection is received.

3 8. If it determines that the Plan may proceed with the court
4 filing, the Department shall confirm that fact in writing to the
5 applicant.

6 B. Application to the court for approval of the Insurance
7 Business Transfer Plan.

8 1. Within thirty (30) days after notice from the Department
9 that the applicant may proceed with the Court filing, the applicant
10 shall apply to the Court for approval of the Insurance Business
11 Transfer Plan. Upon written request by the applicant, the
12 Department may extend the period for filing an application with the
13 court for an additional thirty (30) days.

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

17 3. The application shall be in the form of a verified petition
18 for implementation of the Insurance Business Transfer Plan in the
19 court. The petition shall include the Insurance Business Transfer
20 Plan and shall identify documents and witnesses which the applicant
21 intends to present at a hearing regarding the petition.

22 4. The Department shall be a party to the proceedings before
23 the court concerning the petition and shall be served with copies of
24 all filings pursuant to the Rules for District Courts of Oklahoma.

1 The Department's position in the proceeding shall not be limited by
2 its initial review of the Plan.

3 5. Following the filing of the petition, the applicant shall
4 file a motion for a scheduling order setting a hearing on the
5 petition.

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

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

- 12 a. the date and time of the approval hearing,
- 13 b. the name, address and telephone number of the assuming
14 insurer and transferring insurer,
- 15 c. that a policyholder may comment on or object to the
16 transfer and novation,
- 17 d. the procedures and deadline for submitting comments or
18 objections on the Plan,
- 19 e. a summary of any effect that the transfer and novation
20 will have on the policyholder's rights,
- 21 f. a statement that the assuming insurer is authorized,
22 as provided in this section, to assume the subject
23 business and that court approval of the Plan shall
24 extinguish all rights of policyholders under policies

1 that are part of the subject business against the
2 transferring insurer,

3 g. that policyholders shall not have the opportunity to
4 opt out of or otherwise reject the transfer and
5 novation,

6 h. contact information for the Department where the
7 policyholder may obtain further information, and

8 i. Information on how an electronic copy of the Insurance
9 Business Transfer Plan may be accessed. In the event
10 policyholders are unable to readily access electronic
11 copies, the applicant shall provide hard copies by
12 first class mail;

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

21 C. Approval of the Insurance Business Transfer Plan.

22 1. After the comment period pursuant to paragraph 6 of
23 subsection B of this section has ended the Insurance Business
24

1 Transfer Plan shall be presented by the applicant for approval by
2 the court.

3 2. At any time before the court issues an order approving the
4 Insurance Business Transfer Plan, the applicant may withdraw the
5 Insurance Business Transfer Plan without prejudice.

6 3. If the court finds that the implementation of the Insurance
7 Business Transfer Plan would not materially adversely affect the
8 interests of policyholders or claimants that are part of the subject
9 business, the court shall enter an implementation order. The
10 implementation order shall:

- 11 a. order implementation of the Insurance Business
12 Transfer Plan,
- 13 b. order a statutory novation with respect to all
14 policyholders or reinsureds and their respective
15 policies and reinsurance agreements under the subject
16 business, including the extinguishment of all rights
17 of policyholders under policies that are part of the
18 subject business against the transferring insurer, and
19 providing that the transferring insurer shall have no
20 further rights, obligations, or liabilities with
21 respect to such policies, and that the assuming
22 insurer shall have all such rights, obligations, and
23 liabilities as if it, instead of the transferring
24 insurer, were the original insurer of such policies,

- c. release the transferring insurer from any and all obligations or liabilities under policies that are part of the subject business,
- d. authorize and order the transfer of property or liabilities, including, but not limited to the outwards reinsurance of transferred policies and contracts on the subject business, notwithstanding any non-assignment provisions in any such reinsurance contracts. The subject business shall vest in and become liabilities of the assuming insurer,
- e. order that the applicant provide notice of the transfer and novation in accordance with the notice provisions in Section 5 of this act, and
- f. make such other provisions with respect to incidental, consequential and supplementary matters as are necessary to assure the Insurance Business Transfer Plan is fully and effectively carried out.

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

- a. deny the Petition, or
- b. provide the applicant leave to file an amended Insurance Business Transfer Plan and Petition.

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

1 D. Implementation of Insurance Business Transfer Plan.

2 The Commissioner shall have the authority to promulgate
3 reasonable rules for the implementation of an Insurance Business
4 Transfer Plan.

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

8 Insurers subject to this act consent to the jurisdiction of the
9 Department with regard to ongoing oversight of operations,
10 management and solvency relating to the transferred business,
11 including the authority of the Department to conduct financial
12 analysis and examinations.

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

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

21 B. The Department may retain independent attorneys, appraisers,
22 actuaries, certified public accountants, or other professionals and
23 specialists to assist Department personnel in connection with the
24 review required by this act.

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

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

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