

1 ENGROSSED SENATE
2 BILL NO. 885

By: Paxton of the Senate

3 and

4 Sims of the House

5
6 An Act relating to the Insurance Business Plan
7 Transfer Act; amending Section 2, Chapter 232, O.S.L.
8 2018 (36 O.S. Supp. 2018, Section 1682), which
9 relates to purpose of act; adding to purpose of act;
10 amending Section 3, Chapter 232, O.S.L. 2018 (36 O.S.
11 Supp. 2018, Section 1683) which relates to
12 definitions; modifying definitions; updating
13 references; amending Section 6, Chapter 232, O.S.L.
14 2018 (36 O.S. Supp. 2018, Section 1686), which
15 relates to application procedures; modifying
16 requirements of certain reporting; modifying
17 requirements of court implementation order;
18 prohibiting effect on guaranty fund coverage during
19 transfer of insurance business; classifying certain
20 documents, information, and persons as confidential
and not subject to certain legal action; establishing
timeline for certain documents to become open
records; amending Section 8, Chapter 232, O.S.L. 2018
(36 O.S. Supp. 2018, Section 1688), which relates to
compensation; declaring certain insurers obligated to
pay certain costs and compensation during business
transfer; prohibiting creation of certain duty for
independent expert during business transfer; and
providing an effective date.

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

22 SECTION 1. AMENDATORY Section 2, Chapter 232, O.S.L.
23 2018 (36 O.S. Supp. 2018, Section 1682), is amended to read as
24 follows:

1 Section 1682. This act is adopted to provide options to address
2 the significant limitations in the current methods available to
3 insurers to transfer or assume blocks of insurance business in an
4 efficient and cost-effective manner that provides needed legal
5 finality for such transfers in order to provide for improved
6 operational and capital efficiency for insurance companies,
7 stimulates the economy by attracting segments of the insurance
8 industry to the state, makes Oklahoma an attractive home
9 jurisdiction for insurance companies, encourages economic growth and
10 increased investment in the financial services sector and increases
11 the availability of quality insurance industry jobs in Oklahoma.
12 These purposes are accomplished by providing a basis and procedures
13 for the transfer and statutory novation of policies from a
14 transferring insurer to an assuming insurer by way of an Insurance
15 Business Transfer without the affirmative consent of policyholders
16 or reinsureds. The novation is effected by court order. This act
17 establishes the requirements for notice and disclosure and standards
18 and procedures for the approval of the transfer and novation by the
19 Oklahoma Insurance Commissioner and the District Court of Oklahoma
20 County pursuant to an Insurance Business Transfer Plan. This act
21 does not limit or restrict other means of effecting a transfer or
22 novation.

SECTION 2. AMENDATORY Section 3, Chapter 232, O.S.L.

2018 (36 O.S. Supp. 2018, Section 1683), is amended to read as follows:

Section 1683. 1. "Affiliate" has the meaning ascribed to such term in Section 1631 of Title 36 of the Oklahoma Statutes.

2. "Applicant" means a transferring insurer or reinsurer applying under Section ~~6~~ 1686 of this ~~act~~ title.

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

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

5. "Department" means the Oklahoma Insurance Department.

6. "Commissioner" means the Oklahoma Insurance Commissioner.

7. "Implementation order" means an order issued by the Court under Section ~~6~~ 1686 of this ~~act~~ title.

8. "Insurance Business Transfer" means a transfer and novation in accordance with this act. Insurance Business Transfers will transfer insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer. Once approved pursuant to this act, 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 is not appointed by the Commissioner to assist in any capacity in
17 any proceeding initiated pursuant to Article 18 or Article 19 of
18 Title 36 of the Oklahoma Statutes and is receiving no compensation
19 in connection with the transaction governed by this act other than a
20 fee based on ~~a fixed or~~ an hourly basis that is not contingent on
21 the approval or consummation of an Insurance Business Transfer and
22 provides proof of insurance coverage that is satisfactory to the
23 Commissioner.

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

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

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

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

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

1 transferring insurer's insurance obligations or risks, or both,
2 under the transferred policies are extinguished.

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

7 SECTION 3. AMENDATORY Section 6, Chapter 232, O.S.L.
8 2018 (36 O.S. Supp. 2018, Section 1686), is amended to read as
9 follows:

10 Section 1686. A. Application Procedure.

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

- 17 a. the name, address and telephone number of the
18 transferring insurer and the assuming insurer and
19 their respective direct and indirect controlling
20 persons, if any,
- 21 b. summary of the Insurance Business Transfer Plan,
- 22 c. identification and description of the subject
23 business,
- 24

- d. most recent audited financial statements and statutory annual and quarterly reports of the transferring insurer and assuming insurer filed with their 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 (3) 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,

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

1 the experience that qualifies him or her as an
2 expert suitable for the engagement,

3 (2) whether the independent expert has, or has had,
4 direct or indirect interest in the transferring
5 or assuming insurer or any of their respective
6 affiliates,

7 (3) the scope of the report,

8 (4) a summary of the terms of the Insurance Business
9 Transfer Plan to the extent relevant to the
10 report,

11 (5) a listing and summaries of documents, reports and
12 other material information the independent expert
13 has considered in preparing the report and
14 whether any information requested was not
15 provided,

16 (6) the extent to which the independent expert has
17 relied on information provided by and the
18 judgment of others,

19 (7) the people on whom the independent expert has
20 relied and why, in his or her opinion, such
21 reliance is reasonable,

22 (8) the independent expert's opinion of the likely
23 effects of the Insurance Business Transfer Plan
24

1 on policyholders and claimants, distinguishing
2 between:

3 (a) transferring policyholders and claimants,

4 (b) policyholders and claimants of the

5 transferring insurer whose policies will not
6 be transferred, and

7 (c) policyholders and claimants of the assuming
8 insurer,

9 (9) for each opinion that the independent expert

10 expresses in the report the facts and

11 circumstances supporting the opinion, and

12 (10) consideration as to whether the security position
13 of policyholders that are affected by the
14 Insurance Business Transfer are materially
15 adversely affected by the transfer.

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

19 a. analysis of the transferring insurer's actuarial
20 review of reserves for the subject business to
21 determine the reserve adequacy,

22 b. analysis of the financial condition of the
23 transferring and assuming insurers and the effect the
24

1 transfer will have on the financial condition of each
2 company,

3 c. review of the plans or proposals the assuming insurer
4 has with respect to the administration of the policies
5 subject to the proposed transfer,

6 d. whether the proposed transfer has a material, adverse
7 impact on the policyholders and claimants of the
8 transferring and the assuming insurers,

9 e. analysis of the assuming insurer's corporate
10 governance structure to ensure that there is proper
11 board and management oversight and expertise to manage
12 the subject business, and

13 f. any other information that the Commissioner requests
14 in order to review the Insurance Business Transfer.

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

20 4. The Commissioner shall authorize the submission of the Plan
21 to the court unless he or she finds that the Insurance Business
22 Transfer would have a material adverse impact on the interests of
23 policyholders or claimants that are part of the subject business.
24

1 5. If the Commissioner 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, he
4 or she shall notify the applicant and specify any modifications,
5 supplements or amendments and any additional information or
6 documentation with respect to the Plan that must be provided to the
7 Commissioner before he or she will allow the applicant to proceed
8 with the court filing.

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

22 7. The Commissioner's review period in paragraph ~~2~~ 3 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 the Commissioner determines that the Plan may proceed
4 with the court filing, the Commissioner shall confirm that fact in
5 writing to the 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 Commissioner
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 Commissioner may extend the period for filing an application with
13 the court for an additional thirty (30) days.

14 2. The applicant shall inform the court of the reasons why he
15 or she 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 any documents and witnesses which the
21 applicant intends to present at a hearing regarding the petition.

22 4. The Commissioner 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 Commissioner's position in the proceeding shall not be limited
2 by his or her 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~~ 1685 of this title. Following the date of distribution of
10 the notice, there shall be a sixty-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 Insurance Department where
7 the 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. Any person participating in the approval hearing must
18 follow the process established by the court and shall bear his or
19 her own costs and attorney fees.

20 C. Approval of the Insurance Business Transfer Plan.

21 1. After the comment period pursuant to paragraph 6 of
22 subsection B of this section has ended the Insurance Business
23 Transfer Plan shall be presented by the applicant for approval by
24 the court.

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

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

9 a. order implementation of the Insurance Business
10 Transfer Plan,

11 b. order a statutory novation with respect to all
12 policyholders or reinsureds and their respective
13 policies and reinsurance agreements under the subject
14 business, including the extinguishment of all rights
15 of policyholders under policies that are part of the
16 subject business against the transferring insurer, and
17 providing that the transferring insurer shall have no
18 further rights, obligations, or liabilities with
19 respect to such policies, and that the assuming
20 insurer shall have all such rights, obligations, and
21 liabilities as if it, ~~instead of the transferring~~
22 ~~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 ceded reinsurance of transferred policies and contracts on the subject business, notwithstanding any nonassignment 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~~ 1685 of this title, 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.

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

3 D. Implementation of Insurance Business Transfer Plan.

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

6 E. No action taken pursuant to this section shall affect the
7 guaranty fund coverage which existed on the transferred subject
8 business prior to the implementation of the Insurance Business
9 Transfer Plan.

10 F. While an application for an Insurance Business Transfer is
11 under review by the Commissioner pursuant to this section, all
12 documents, materials or other information obtained by or disclosed
13 to the Department, or any person acting on behalf of the Department,
14 in connection with an application for an Insurance Business
15 Transfer, shall be given confidential treatment and are not subject
16 to subpoena or discovery and may not be made public by the
17 Department, the Commissioner, or any other person. After the review
18 of the application by the Commissioner is concluded and the
19 Commissioner has provided the applicant written notice pursuant to
20 paragraph 8 of subsection A of this section, any documents for which
21 the applicant has requested confidential treatment or which are not
22 otherwise confidential shall be open records.

1 SECTION 4. AMENDATORY Section 8, Chapter 232, O.S.L.

2 2018 (36 O.S. Supp. 2018, Section 1688), is amended to read as
3 follows:

4 Section 1688. A. At the time of filing its application with
5 the Insurance Commissioner for review and approval of an Insurance
6 Business Transfer Plan, the applicant shall pay a nonrefundable fee
7 to the Insurance Department in the amount of Ten Thousand Dollars
8 (\$10,000.00).

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

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

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

3 E. The transferring insurer and the assuming insurer shall
4 jointly be obligated to pay any compensation, costs and expenses of
5 the independent expert and any consultants retained by the
6 independent expert and approved by the Department incurred in
7 fulfilling the obligations of the independent expert under this act.
8 Nothing in this act shall be construed to create any duty for the
9 independent expert to any party other than the Department or the
10 Court.

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

19 SECTION 5. This act shall become effective November 1, 2019.
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1 Passed the Senate the 27th day of February, 2019.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

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8 _____
9 Presiding Officer of the House
10 of Representatives