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February 20, 2019

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 885

By: Paxton of the Senate

and

Sims of the House

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[ Insurance Business Transfer Act - purpose of the
act - application procedures - insurance business
transfer plans - effective date ]
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

Section 1682. This act is adopted to provide options to address the significant limitations in the current methods available to insurers to transfer or assume blocks of insurance business in an efficient and cost-effective manner that provides needed legal finality for such transfers in order to provide for improved operational and capital efficiency for insurance companies, stimulates the economy by attracting segments of the insurance industry to the state, makes Oklahoma an attractive home

jurisdiction for insurance companies, encourages economic growth and
increased investment in the financial services sector and increases
the availability of quality insurance industry jobs in Oklahoma.
These purposes are accomplished by providing 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
establishes the requirements for notice and disclosure and standards
and procedures for the approval of the transfer and novation by the
Oklahoma Insurance Commissioner and the District Court of Oklahoma
County pursuant to an Insurance Business Transfer Plan. This act
does not limit or restrict other means of effecting a transfer or
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

1 be a company established pursuant to the Oklahoma Captive Insurance
2 Company Act.

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

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

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

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

9 8. "Insurance Business Transfer" means a transfer and novation
10 in accordance with this act. Insurance Business Transfers will
11 transfer insurance obligations or risks, or both, of existing or in-
12 force contracts of insurance or reinsurance from a transferring
13 insurer to an assuming insurer. Once approved pursuant to this act,
14 the Insurance Business Transfer will effect a novation of the
15 transferred contracts of insurance or reinsurance with the result
16 that the assuming insurer becomes directly liable to the
17 policyholders of the transferring insurer and the transferring
18 insurer's insurance obligations or risks, or both, under the
19 contracts are extinguished.

20 9. "Insurance Business Transfer Plan" or "Plan" means the plan
21 submitted to the Department to accomplish the transfer and novation
22 pursuant to an Insurance Business Transfer, including any associated
23 transfer of assets and rights from or on behalf of the transferring
24 insurer to the assuming insurer.

1 10. "Independent expert" means an impartial person who has no
2 financial interest in either the assuming insurer or transferring
3 insurer, has not been employed by or acted as an officer, director,
4 consultant or other independent contractor for either the assuming
5 insurer or transferring insurer within the past twelve (12) months,
6 is not appointed by the Commissioner to assist in any capacity in
7 any proceeding initiated pursuant to Article 18 or Article 19 of
8 Title 36 of the Oklahoma Statutes and is receiving no compensation
9 in connection with the transaction governed by this act other than a
10 fee based on ~~a fixed or~~ an hourly basis that is not contingent on
11 the approval or consummation of an Insurance Business Transfer and
12 provides proof of insurance coverage that is satisfactory to the
13 Commissioner.

14 11. "Insurer" means an insurance or surety company, including a
15 reinsurance company, and shall be deemed to include a corporation,
16 company, partnership, association, society, order, individual or
17 aggregation of individuals engaging in or proposing or attempting to
18 engage in any kind of insurance or surety business, including the
19 exchanging of reciprocal or inter-insurance contracts between
20 individuals, partnerships and corporations.

21 12. "Policy" means a policy, annuity contract or certificate of
22 insurance or a contract of reinsurance pursuant to which the insurer
23 agrees to assume an obligation or risk, or both, of the policyholder
24 or to make payments on behalf of, or to, the policyholder or its

1 beneficiaries, and shall include property, casualty, life, health
2 and any other line of insurance the Commissioner finds via
3 regulation is suitable for an insurance business transfer.

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

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

8 15. "Transfer and novation" means the transfer of insurance
9 obligations or risks, or both, of existing or in-force policies from
10 a transferring insurer to an assuming insurer, and is intended to
11 effect a novation of the transferred policies with the result that
12 the assuming insurer becomes directly liable to the policyholders of
13 the transferring insurer on the transferred policies and the
14 transferring insurer's insurance obligations or risks, or both,
15 under the transferred policies are extinguished.

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

20 SECTION 3. AMENDATORY Section 6, Chapter 232, O.S.L.
21 2018 (36 O.S. Supp. 2018, Section 1686), is amended to read as
22 follows:

23 Section 1686. A. Application Procedure.
24

1 1. An Insurance Business Transfer Plan must be filed by the
2 applicant with the Insurance Commissioner for his or her review and
3 approval. The Plan must contain the information set forth below or
4 an explanation as to why the information is not included. The Plan
5 may be supplemented by other information deemed necessary by the
6 Commissioner:

- 7 a. the name, address and telephone number of the
8 transferring insurer and the assuming insurer and
9 their respective direct and indirect controlling
10 persons, if any,
- 11 b. summary of the Insurance Business Transfer Plan,
- 12 c. identification and description of the subject
13 business,
- 14 d. most recent audited financial statements and statutory
15 annual and quarterly reports of the transferring
16 insurer and assuming insurer filed with their
17 domiciliary regulator,
- 18 e. the most recent actuarial report and opinion that
19 quantify the liabilities associated with the subject
20 business,
- 21 f. pro-forma financial statements showing the projected
22 statutory balance sheet, results of operations and
23 cash flows of the assuming insurer for the three (3)
24 years following the proposed transfer and novation,

- 1 g. officers' certificates of the transferring insurer and
2 the assuming insurer attesting that each has obtained
3 all required internal approvals and authorizations
4 regarding the Insurance Business Transfer Plan and
5 completed all necessary and appropriate actions
6 relating thereto,
- 7 h. proposal for Plan implementation and administration,
8 including the form of notice to be provided under the
9 Insurance Business Transfer Plan to any policyholder
10 whose policy is part of the subject business,
- 11 i. full description as to how such notice shall be
12 provided,
- 13 j. description of any reinsurance arrangements that would
14 pass to the assuming insurer under the Insurance
15 Business Transfer Plan,
- 16 k. description of any guarantees or additional
17 reinsurance that will cover the subject business
18 following the transfer and novation,
- 19 l. a statement describing the assuming insurer's proposed
20 investment policies and any contemplated third-party
21 claims management and administration arrangements,
- 22 m. evidence of approval or nonobjection of the transfer
23 from the chief insurance regulator of the state of the
24 transferring insurer's domicile, and

1 n. an opinion report from an independent expert, selected
2 by the Commissioner from a list of at least two
3 nominees submitted jointly by the transferring insurer
4 and the assuming insurer, to assist the Commissioner
5 and the court in connection with their review of the
6 proposed transaction. Should the Commissioner, in his
7 or her sole discretion, reject the nominees, he or she
8 may appoint the independent expert. The report shall
9 provide the following:

- 10 (1) a statement of the independent expert's
11 professional qualifications and descriptions of
12 the experience that qualifies him or her as an
13 expert suitable for the engagement,
- 14 (2) whether the independent expert has, or has had,
15 direct or indirect interest in the transferring
16 or assuming insurer or any of their respective
17 affiliates,
- 18 (3) the scope of the report,
- 19 (4) a summary of the terms of the Insurance Business
20 Transfer Plan to the extent relevant to the
21 report,
- 22 (5) a listing and summaries of documents, reports and
23 other material information the independent expert
24 has considered in preparing the report and

whether any information requested was not
provided,

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

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

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

(a) transferring policyholders and claimants,

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

(c) policyholders and claimants of the assuming
insurer,

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

(10) consideration as to whether the security position
of policyholders that are affected by the

1 Insurance Business Transfer are materially
2 adversely affected by the transfer.

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

- 6 a. analysis of the transferring insurer's actuarial
7 review of reserves for the subject business to
8 determine the reserve adequacy,
- 9 b. analysis of the financial condition of the
10 transferring and assuming insurers and the effect the
11 transfer will have on the financial condition of each
12 company,
- 13 c. review of the plans or proposals the assuming insurer
14 has with respect to the administration of the policies
15 subject to the proposed transfer,
- 16 d. whether the proposed transfer has a material, adverse
17 impact on the policyholders and claimants of the
18 transferring and the assuming insurers,
- 19 e. analysis of the assuming insurer's corporate
20 governance structure to ensure that there is proper
21 board and management oversight and expertise to manage
22 the subject business, and
- 23 f. any other information that the Commissioner requests
24 in order to review the Insurance Business Transfer.

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

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

10 5. If the Commissioner determines that the Insurance Business
11 Transfer would have a material adverse impact on the interests of
12 policyholders or claimants that are part of the subject business, he
13 or she shall notify the applicant and specify any modifications,
14 supplements or amendments and any additional information or
15 documentation with respect to the Plan that must be provided to the
16 Commissioner before he or she will allow the applicant to proceed
17 with the court filing.

18 6. The applicant shall have thirty (30) days from the date the
19 Commissioner notifies him or her, pursuant to paragraph 5 of this
20 subsection, to file an amended Insurance Business Transfer Plan
21 providing the modifications, supplements or amendments and
22 additional information or documentation as requested by the
23 Commissioner. If necessary the applicant may request in writing an
24 extension of time of thirty (30) days. If the applicant does not

1 make an amended filing within the time period provided for in this
2 paragraph, including any extension of time granted by the
3 Commissioner, the Insurance Business Transfer Plan filing will
4 terminate and a subsequent filing by the applicant will be
5 considered a new filing which shall require compliance with all
6 provisions of this act as if the prior filing had never been made.

7 7. The Commissioner's review period in paragraph ~~2~~ 3 of this
8 subsection shall recommence when the modification, supplement,
9 amendment or additional information requested in paragraph 5 of this
10 subsection is received.

11 8. If the Commissioner determines that the Plan may proceed
12 with the court filing, the Commissioner shall confirm that fact in
13 writing to the applicant.

14 B. Application to the court for approval of the Insurance
15 Business Transfer Plan.

16 1. Within thirty (30) days after notice from the Commissioner
17 that the applicant may proceed with the court filing, the applicant
18 shall apply to the court for approval of the Insurance Business
19 Transfer Plan. Upon written request by the applicant, the
20 Commissioner may extend the period for filing an application with
21 the court for an additional thirty (30) days.

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

1 3. The application shall be in the form of a verified petition
2 for implementation of the Insurance Business Transfer Plan in the
3 court. The petition shall include the Insurance Business Transfer
4 Plan and shall identify any documents and witnesses which the
5 applicant intends to present at a hearing regarding the petition.

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

11 5. Following the filing of the petition, the applicant shall
12 file a motion for a scheduling order setting a hearing on the
13 petition.

14 6. Within fifteen (15) days after receipt of the scheduling
15 order, the applicant shall cause notice of the hearing to be
16 provided in accordance with the notice provisions of Section ~~5 of~~
17 ~~this act~~ 1685 of this title. Following the date of distribution of
18 the notice, there shall be a sixty-day comment period.

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

- 20 a. the date and time of the approval hearing,
- 21 b. the name, address and telephone number of the assuming
22 insurer and transferring insurer,
- 23 c. that a policyholder may comment on or object to the
24 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 Insurance 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 copies, the applicant shall provide hard copies by first-class mail.

8. Any person, including by their legal representative, who considers himself, herself or itself to be adversely affected can present evidence or comments to the court at the approval hearing. However, such comment or evidence shall not confer standing on any

1 person. Any person participating in the approval hearing must
2 follow the process established by the court and shall bear his or
3 her own costs and attorney fees.

4 C. Approval of the Insurance Business Transfer Plan.

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

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

12 3. If the court finds that the implementation of the Insurance
13 Business Transfer Plan would not materially adversely affect the
14 interests of policyholders or claimants that are part of the subject
15 business, the court shall enter an implementation order. The
16 implementation order shall:

17 a. order implementation of the Insurance Business
18 Transfer Plan,

19 b. order a statutory novation with respect to all
20 policyholders or reinsureds and their respective
21 policies and reinsurance agreements under the subject
22 business, including the extinguishment of all rights
23 of policyholders under policies that are part of the
24 subject business against the transferring insurer, and

- 1 providing that the transferring insurer shall have no
2 further rights, obligations, or liabilities with
3 respect to such policies, and that the assuming
4 insurer shall have all such rights, obligations, and
5 liabilities as if it, ~~instead of the transferring~~
6 ~~insurer,~~ were the original insurer of such policies,
- 7 c. release the transferring insurer from any and all
8 obligations or liabilities under policies that are
9 part of the subject business,
- 10 d. authorize and order the transfer of property or
11 liabilities, including, but not limited to, the ceded
12 reinsurance of transferred policies and contracts on
13 the subject business, notwithstanding any
14 nonassignment provisions in any such reinsurance
15 contracts. The subject business shall vest in and
16 become liabilities of the assuming insurer,
- 17 e. order that the applicant provide notice of the
18 transfer and novation in accordance with the notice
19 provisions in Section ~~5 of this act~~ 1685 of this
20 title, and
- 21 f. make such other provisions with respect to incidental,
22 consequential and supplementary matters as are
23 necessary to assure the Insurance Business Transfer
24 Plan is fully and effectively carried out.

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

3 a. deny the petition, or

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

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

8 D. Implementation of Insurance Business Transfer Plan.

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

11 E. No action taken pursuant to this section shall affect the
12 guaranty fund coverage which existed on the transferred subject
13 business prior to the implementation of the Insurance Business
14 Transfer Plan.

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

1 paragraph 8 of subsection A of this section, any documents for which
2 the applicant has requested confidential treatment or which are not
3 otherwise confidential shall be open records.

4 SECTION 4. AMENDATORY Section 8, Chapter 232, O.S.L.
5 2018 (36 O.S. Supp. 2018, Section 1688), is amended to read as
6 follows:

7 Section 1688. A. At the time of filing its application with
8 the Insurance Commissioner for review and approval of an Insurance
9 Business Transfer Plan, the applicant shall pay a nonrefundable fee
10 to the Insurance Department in the amount of Ten Thousand Dollars
11 (\$10,000.00).

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

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

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

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

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

22 SECTION 5. This act shall become effective November 1, 2019.

23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
24 February 20, 2019 - DO PASS AS AMENDED